

# Northumbria Research Link

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**Supervising the supervisors: what are the challenges inherent in teaching in a law clinic environment and how can colleagues be supported on the transition from practitioner to practice-informed teacher and researcher?**

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**DLaw**

**October 2020**

*A thesis submitted in partial fulfilment of the requirements of the University of Northumbria at Newcastle for the degree of Professional Doctorate*

## DECLARATION

I declare that the work contained in this thesis has not been submitted for any other award and that it is all my own work. I also confirm that this work fully acknowledges opinions, ideas and contributions from the work of others. Any ethical clearance for the research presented in this thesis has been approved. Approval has been sought and granted by the Chair of the School Research Committee. The law presented in this thesis is correct as at October 2020.

I declare that the word count of this thesis, excluding appendices, is 36,518

Name: Carol Boothby

Signature:

Date: 31/10/2020

### ***Acknowledgements***

*Thanks to my family for their support, especially my husband Peter, who has been endlessly encouraging.*

*Thanks also to my wonderful supervisor Elaine Hall, who makes all things possible and never ever gives up on you.*

*Dedicated to my wonderful colleagues at Northumbria University Law School, especially the Student Law Office team, I miss you all.*

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## Abstract

This doctorate explores concepts of professional identity within the context of teaching in the law clinic- a form of practice- based teaching, but one which pushes the boundaries of the concept in that clinical supervisors operate both within the reality of live client casework, as legal professionals, as well as in the context of the Higher Education environment.

Transition is a recurring theme, and I examine the pressures created by the need to transition from legal professional to a role combining teaching and learning expertise, where real world experience is valued, to occupying a space in academia. Through my experience as Director of the Northumbria law clinic, the Student Law Office, I examine the intersection of praxis and research, and how practitioners can create a community of practice which can in its turn provide a 'safe space' for their further evolution into research-active academics – or at least a safe platform for launching into the unfamiliar world of research. I reflect on the challenges of this journey through liminality, the temporal and recursive nature of this transition, and in doing so, provide a unique insight into the model of clinical supervision at Northumbria University Law School.

## Chapter 1 – Introduction and context including research objectives

### 1.1 Introduction

The overarching theme of this research is an examination of the in-house law clinic,<sup>1</sup> the clinical supervisor, and the role of Director.

The research question is ‘supervising the supervisors: what are the challenges inherent in teaching in a law clinic environment and how can colleagues be supported on the transition from practitioner to practice-informed teacher and researcher?’, and this reflects a paradigm which encompasses qualitative research looking at behaviour which is socially and culturally situated using naturalistic, ethnographical methods, including the use of dialogic interviews as a reflexive framing tool.

The ‘golden thread’ I seek to weave through this work is in exploring professional identity, transition of identity and the role of a community of practice in supporting supervisors through that transition and sustaining them in their role. I examine the experiences of those teaching in the law clinic through critical engagement with theory including ‘community of practice’, where I am both a member of the community as well as leading this community.

I further examine the impact of cultures of ‘performativity’ in the Higher Education sector and in particular the multiplication of pressure where supervisors of supervisors are required to mediate change, at the interface between the clinic, the law school and the wider university hierarchy.

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<sup>1</sup> I have used the term ‘in house’ to describe the clinics which developed within the law school curriculum and which were generally although not exclusively physically situated within the university, with law school staff supervising. Supervisors at Northumbria were not however ‘in house’ in the sense of offering advice to the University itself.

The thesis explores the overarching themes of professional identity, motivation and retention for those working across practitioner and academic spaces and considers the points of affordance and conflict between the intrinsic nature of the work, the values of the actors and how the work is framed within the organisation.

## 1.2 Format - The Portfolio approach

I am adopting a portfolio approach, using a variety of pieces of work including published papers, conference presentations, book chapters, posters (around 35,000 words in total) supported by this reflective commentary, which draws together these pieces, re-considers their inter-relation and critically assesses the contribution to knowledge in the field of clinical legal education.

The visual image of the temple (below) indicates the over-arching theme, with blue tiles showing the key themes, and the grey tiles showing the strands of research, which includes my published and unpublished work, numbered and then listed in Appendix 1. The numbers themselves are not immediately meaningful to the reader without looking at the appendix, but I decided to include these simply to illustrate the process of drawing together and considering the varying weights of work already completed in the various thematic areas.

The dialogic interviews were conducted to reflexively explore the decisions I made, both in my experience as a clinician and academic. I also use the dialogic interview themes to shape the temple and as strands to explore key areas within clinical teaching in a university environment.

### 1.2.1 Professional doctorates- key features

There appear to be two key features of professional doctorates – experience, which is the aspect which differentiates it from a PhD, and the positionality of the author.<sup>2</sup> Bourner et al. see the professional doctorate as having ‘a specific role to play, combining a strongly grounded experience in current forms of practice with a transformative aim in the discovery

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<sup>2</sup> T. W. Maxwell and G. Kupczyk-Romanczuk, "Producing the professional doctorate: the portfolio as a legitimate alternative to the dissertation," *Innovations in Education and Teaching International* 46, no. 2 (2009): 140, <https://doi.org/10.1080/14703290902843760>.

and application of knowledge, which parallels the aims of the traditional doctorate with regard to subject disciplines.<sup>3</sup> In seeking to understand the requirements and context of a professional doctorate, I have found consolation in the responses and views recorded, reflecting that many undertaking professional doctorates suffer from a lack of confidence,<sup>4</sup> and that the portfolio model can raise issues of clarity of expectations and distinctiveness of tasks.<sup>5</sup> I found echoes of my own experiences in the finding that professional doctorate candidates are likely to be 'time poor and experience rich'.<sup>6</sup> I have adopted Maxwell's image of the Greek temple, with my various pieces of work supporting an over-arching pediment represented by this linking piece.

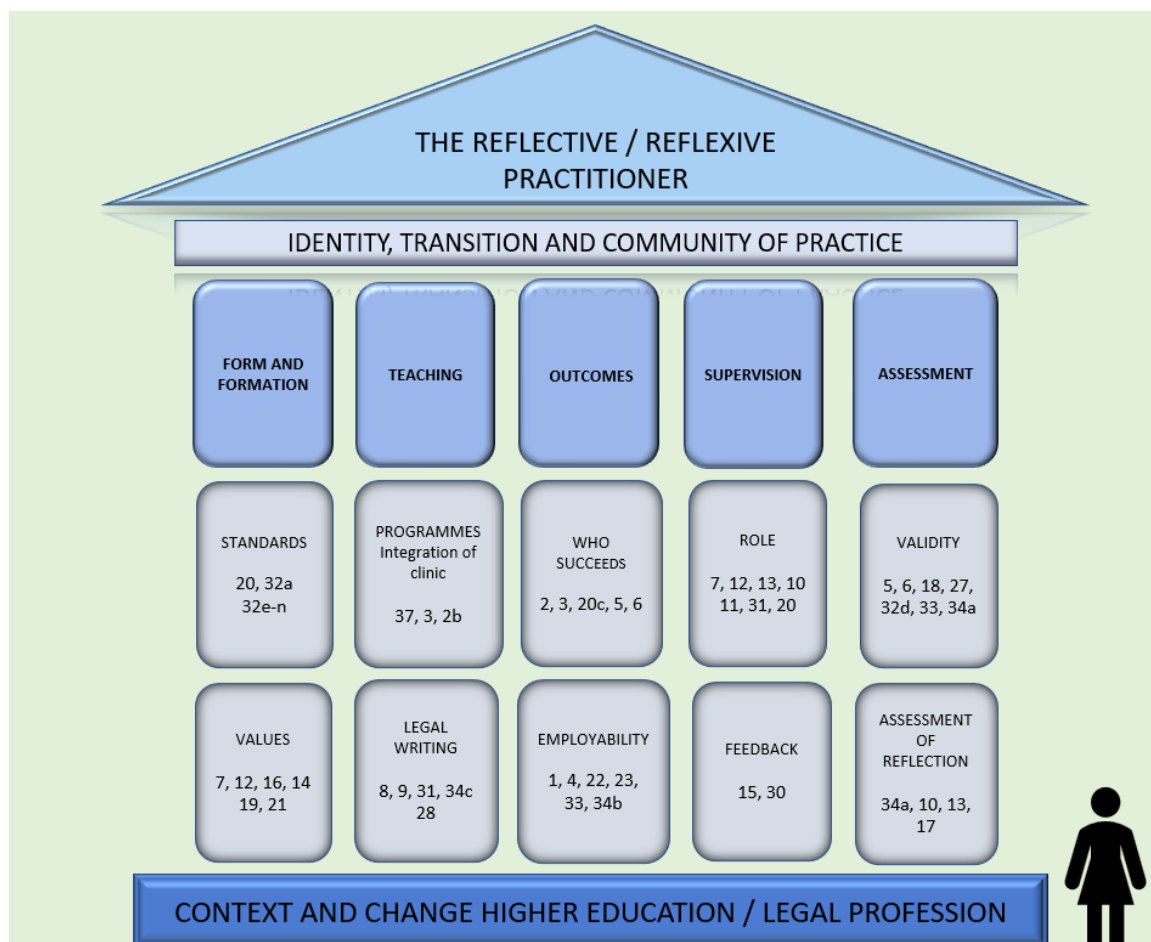
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<sup>3</sup> Tom Bournier, Rachel Bowden, and Stuart Laing, "Professional Doctorates in England," *Studies in Higher Education* 26, no. 1 (2010), <https://doi.org/10.1080/03075070124819>.

<sup>4</sup> Ruth Neumann, "Doctoral Differences: Professional doctorates and PhDs compared," *Journal of Higher Education Policy and Management* 27, no. 2 (2005): 183, <https://doi.org/10.1080/13600800500120027>.

<sup>5</sup> Neumann, "Doctoral Differences: Professional doctorates and PhDs compared."

<sup>6</sup> Helen Wildy, Sanna Peden, and Karyn Chan, "The rise of professional doctorates: case studies of the Doctorate in Education in China, Iceland and Australia," *Studies in Higher Education* 40, no. 5 (2014): 772, <https://doi.org/10.1080/03075079.2013.842968>.



**Figure 1 Adaptation of Maxwell's temple analogy**

Maxwell sees the representation of the person (a figure standing within the temple) as important:

the positioning of the professional researcher within the research product in this way symbolises the researcher's own voice as valid, especially in terms of the authority of the researcher as an experienced professional and hence the credibility that is brought to bear upon the analyses.<sup>7</sup>

<sup>7</sup> Maxwell and Kupczyk-Romanczuk, "Producing the professional doctorate: the portfolio as a legitimate alternative to the dissertation," 140.

## 1.3 About the literature review

### 1.3.1 The use of my existing publications

There are several dimensions to the literature review: one element is the body of work set out in the appendices. These pieces of work, created over a period of 15 years, form the 'pillars' of the temple, and reference a range of databases and sources including those specific to clinic, such as the Law Teacher and International Journal of Clinical Legal Education, as well as non- legal sources, such as those focussed on teaching and learning, and others drawing on analogous professional environments such as social work or medicine. In coming to this doctorate, I initially see myself as standing amongst or on top of the scattered 'blocks' of work which make up the pillars. Through this work, whilst I touch on the five pillars and their themes, their real purpose is in representing the supporting body of published and unpublished work.

In creating the over-arching reflective commentary, which forms the roof of the temple, I have gone through a process of curating this body of work, ordering it into the supporting pillars, and setting it on a foundation of the context of and change within Higher Education and the legal profession. The dialogic interviews have enabled me to explore the base of the temple in terms of context and change, and to pick out some of the key themes coming out of the body of work.

This process of curation through thematic analysis has allowed me to move from within the temple structure to outside it, enabling me to reflexively examine a variety of theories for their congruence, validity and usefulness, and as a lens for defining the uniqueness of the role of law clinic supervisor. In particular, the lens of 'communities of practice' has enabled me to



look back on a 'landscape of practice'. In exploring this theoretical framework, I have explored the literature on this and other potential frameworks seeking the best 'fit' for 'in house' clinical supervision. The pediment of the temple represents these themes, and what could be seen as the 'golden thread' of professional identity, transition and the role of community of practice in supporting and developing that transition.

### 1.3.2 Approach to relevant literature

Within this reflective piece, I have adopted the approach outlined by Maxwell, in presenting a selected review of the relevant literature, adopting the metaphor of an 'anchor' in which the literature review informs the work,<sup>8</sup> rather than Boote and Beile's 'foundationalist' conception of the literature review, where the intention is to summarise a field of research.<sup>9</sup> In any event, as stated, much of the 'foundation' of the literature review is contained within my existing publications.

### 1.4 Knowledge claims

I have sought a better understanding of the complex role of the supervisor in clinic, and the challenges they face in that role. The new perspective is generated by the detailed examination of what it is to teach in the landscape of the law clinic. This provides benefit in knowing how to support teaching staff working in the law clinic, and is of relevance to law clinics generally, as well as in other professions where teaching takes place in an experiential

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<sup>8</sup> Joseph Maxwell, David Boote, and Penny Beile, "Literature Reviews of, and for, Educational Research: A Commentary on Boote and Beile's "Scholars Before Researchers"/On "Literature Reviews of, and for, Educational Research": A Response to the Critique by Joseph Maxwell," *Educational Researcher* 35, no. 9 (2006): 30.

<sup>9</sup> David N. Boote and Penny Beile, "Scholars Before Researchers: On the Centrality of the Dissertation Literature Review in Research Preparation," *Educational Researcher* 34, no. 6 (2005), <https://doi.org/10.3102/0013189X034006003>, <https://journals.sagepub.com/doi/abs/10.3102/0013189X034006003>.

and/or authentic environment, and the teaching method includes a mentoring and modelling role, that is, other communities of practice.

My objectives were;

- To contribute towards the analysis of CLE teaching culture in practice.
- To add to the discourse on the future of clinic, in particular the challenges around expanding clinic to offer 'clinic for all'.
- To examine the methodological impact of phenomenological methods in legal research, in particular the rewards of dialogic interviewing.
- To offer fresh insight into an understanding of the interface between, and the tensions involved in teaching in clinic and becoming an active researcher.
- To look for synergy between research and practice and providing an insight into clinical supervision in law clinics which could be beneficial for comparison cross-profession.

However, I do not purport to encompass all there is to know about clinic, but rather a sharing of moments of reflection and insights. Curated in this way, this work is a collection of recurrent themes, and not a compendium.

### 1.5 Epistemological approach

Epistemology asks, 'what is the relationship between the inquirer and the known?'.<sup>10</sup> My interest is in the supervisor in clinic from the viewpoint of my role as both a clinical supervisor and as Director of the law clinic, effectively 'supervising the supervisors'.

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<sup>10</sup> Norman K. Denzin and Yvonna S. Lincoln, *The SAGE handbook of qualitative research*, Fifth edition.. ed. (Thousand Oaks: Thousand Oaks Sage Publications, Inc, 2018), 157.

Clinical supervisors require;

extensive current general technical legal skills and knowledge of legal practice, expertise across the access to justice and social justice landscapes and a working knowledge of the large and complex body of higher education teaching and learning practice and research, locally, nationally and internationally.<sup>11</sup>

The nature of the working environment is complex and in exploring this complexity, I examine the mutability and sustainability of the role of clinic supervisor. Are the expectations of the academic role and the reality of teaching in the clinic at odds?

I further examine the sustainability of the current model of clinical supervision at Northumbria, including assessment in clinic.

This examination offers something over the pre-existing level of understanding – as Winter warns;

Experienced practitioners approach their work with a vast and complex array of concepts, theoretical models..... a research process must demonstrably offer something over and above this pre-existing level of understanding <sup>12</sup>

and as Robson states, to guard against the ‘we knew that already’ or ‘we do that every day of our professional lives’.<sup>13</sup>

### 1.5.1 The researcher and the research question – warrant

I rely on reflective thought as defined by Dewey, where such reflection or belief is set against a network of other beliefs which can then operate as evidence, or ‘warrants’<sup>14</sup> Dewey saw reflective inquiry through reflective thought as starting with ‘the confusing, obscure or

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<sup>11</sup> Susannah Sage-Jacobson and Tania Leiman, "Identifying teaching and learning opportunities within professional relationships between clinic and supervisors.(Australia)," *Legal Education Review* 24, no. 1 (2014): 7.

<sup>12</sup> Richard Winter, *Learning from experience : principles and practice in action-research* (London: London : Falmer, 1989), 34-37.

<sup>13</sup> Colin Robson, *Real world research: a resource for social scientists and practitioner-researchers* (1993), 550.

<sup>14</sup> J Dewey, *The Theory of Inquiry* (New York Holt Rinehart Winston 1938).

conflictual situation'.<sup>15</sup> In terms of my position within the situation, Schön saw the process as allowing for the subjective; 'The inquirer does not stand outside the situation like a spectator; he is in it and in transaction with it'<sup>16</sup>

In terms of experience, as a solicitor coming from practice in 2001 to a role as a solicitor tutor in the law clinic at Northumbria University, and then holding the role of Director of the Student Law Office at Northumbria for 8 years from 2009 to 2017, I have extensive knowledge and experience of this clinical teaching role. In addition, I have published and presented on numerous key aspects of teaching in clinic. I have also acted as a consultant to other universities worldwide, while at Northumbria and after leaving this role in 2017. Northumbria University Student Law Office has a unique reputation amongst higher education organisations, both in the UK and internationally. Through the research methodology, and the existing experience I have as a clinician and leader of other clinicians, as well as the unique opportunity to reflect on the experience leading a large team of clinicians at a time of change, this work provides a robust examination of teaching in this environment.

### 1.5.2 Engaging with the research question - 'Getting the fish to see the water'.

This was an analogy used in my joint paper on legal writing, looking at why clinic students did not seem able to draw on their existing knowledge.<sup>17</sup> I came to feel while preparing this doctorate that I too was struggling to recognise my own knowledge. Indeed, it has only been by standing back from my role, professional career research, and essentially reflecting on the landscape of practice, that has enabled me to get some perspective on this. It is this distance

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<sup>15</sup> John Dewey, *How we think* (Editora Griffio, 2015).

<sup>16</sup> Donald A. Schön, "The Theory of Inquiry: Dewey's Legacy to Education," *Curriculum Inquiry* 22, no. 2 (1992): 122, <https://doi.org/10.1080/03626784.1992.11076093>.

<sup>17</sup> C. Boothby and C. Sylvester, "Getting the fish to see the water: An investigation into students' perceptions of learning writing skills in academic modules and in a final year real client legal clinic module," *Law Teacher* 51, no. 2 (2017), <https://doi.org/10.1080/03069400.2015.1070650>.

that has provided me with the motivation to complete this doctorate- a realisation that my role as supervisor and Director created something more long lasting than the completion of a huge variety and volume of tasks, and that this experience, which encompassed being a lawyer, an educator, a manager, a mentor, and a researcher, could be captured. As part of an effort to achieve this distance and enable self-reflexivity, and in order to capture a sense of my 'narrative', I have used dialogic interview as a research methodology. Vickers asks 'Why is it acceptable for people to share their life experiences with a researcher when, concurrently, it is perceived to be problematic that a researcher – who is presumably best qualified to do the recording and interpretation- examines his or her own life? If we are prepared to acknowledge that another's experience is important, why not our own?'.<sup>18</sup> This research methodology enabled me to do both – to bridge the gap between researcher and interviewee, and create a shared account of experiences of clinic supervision, and management of a law clinic.

## Chapter 2 - Methodology and Research Design- dialogic interviewing - 'making the familiar strange and the strange familiar'

The essence of my research is based on the concept of understanding experiences, through a naturalistic and interpretive lens, using an inductive-deductive approach rather than a quantitative, more positivist approach. The interpretive paradigm sees knowledge as constructed. It includes dialogic interview, which, within qualitative research, has been seen as both a data collection method as well as an ethical means of carrying out research. The

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<sup>18</sup> Margaret H. Vickers, "Researchers as Storytellers: Writing on the Edge—And Without a Safety Net," *Qualitative inquiry* 8, no. 5 (2002): 617, <https://doi.org/10.1177/107780002237007>.

Socratic dialogue<sup>19</sup> uses a questioning strategy to make the speaker aware of implicit knowledge, consider their assumptions and work with ambiguity. However, I see the dialogue explored in this research as being relational as well as transformative. Corlett argues that 'when viewed from a relational social constructionist perspective, research-context dialogue may enable participant self – reflexivity and learning'.<sup>20</sup> My research has an anthropological dimension, interrogating what it is to be a clinical supervisor within the culture of Northumbria University Student Law Office.

'Experience is only made available, through memory, when it is turned into a story',<sup>21</sup> and the process of creating this doctoral study involved creating a narrative which in turn makes explicit the insights and learning I gained in relation to clinical supervision – in effect, 'making the familiar strange, and the strange familiar'.<sup>22</sup>

To create a frame of reference for this narrative, I interpreted the transcriptions of two digitally recorded face to face interviews with an experienced clinician who had also been clinic director.<sup>23</sup> The role of the other party in this process was not that of eliciting factual information from me, or vice versa; rather it was to facilitate and prompt an authentically self –reflexive discussion which created an 'artefact' to enable me to then interrogate this. One of the issues I have wrestled with is that of 'warrant'. Despite having an almost unique experience in clinical legal education, I have struggled to take on the mantle of narrator, seeking always to elicit the opinions of others as having greater value. However, through the

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<sup>19</sup> Kevin Morrell, "Socratic Dialogue as a Tool for Teaching Business Ethics," *Journal of Business Ethics* 53, no. 4 (2004), <https://doi.org/10.1023/B:BUSI.0000043500.63029.40>.

<sup>20</sup> Sandra Corlett, "Participant learning in and through research as reflexive dialogue: being 'struck' and the effects of recall," (SAGE Publications, 2013), 465.

<sup>21</sup> David Sims, "Between the Millstones: A Narrative Account of the Vulnerability of Middle Managers' Storying," *Human Relations* 56, no. 10 (2003): 1197, <https://doi.org/10.1177/00187267035610002>.

<sup>22</sup> T. S. Eliot, *Selected essays 1917-1932* (New York: New York : Harcourt, Brace and Co., 1932).

<sup>23</sup> See Appendix for the 2 transcribed interviews which took place 3<sup>rd</sup> September and 13<sup>th</sup> November 2019

dialogic method, I was able to move from inside to outside the 'temple' and adopt both a subjective and an objective role through interrogating the dialogue created, as well as having moments of striking recall, as explored by Corlett.<sup>24</sup> I then examined these interviews together with an interview I carried out with two clinicians from a University in the south of England, to examine initial 'same/difference' themes, as a way of starting to engage with the material.<sup>25</sup>

## 2.1 The use of dialogic interview as a research method

'All human action is dialogic in nature'<sup>26</sup>

Dialogic interviewing moves away from the conventional view of interviewing as a one –way method of gathering data, which has been criticised for the 'inherent power relationship involved in seeking out information that the researcher wants'.<sup>27</sup> Traditional data seeking has been seen as 'a reporting process where "the truth is 'out there' to be discovered, rather than 'a transform(ation of) information into shared experience',<sup>28</sup> according to Way, quoting Denzin. Dialogic interviews have been characterised as intrinsic to critical ethnography where the research seeks to link analysis to wider social systems and structures.<sup>29</sup> One set of dialogic interviews were between myself and a female peer with whom I felt at ease sharing thoughts and ideas, removing any obvious risks of status, power or social privilege. Moen sees equality

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<sup>24</sup> Corlett, "Participant learning in and through research as reflexive dialogue: being 'struck' and the effects of recall."

<sup>25</sup> See Appendix for the transcribed interview with clinicians, 22/5/2016 and for the 'same/difference' table.

<sup>26</sup> Torill Moen, "Reflections on the Narrative Research Approach," *International Journal of Qualitative Methods* 5, no. 4 (2006), <https://doi.org/10.1177/160940690600500405>.

<sup>27</sup> Harvey, *Social Research Glossary* (Quality Research International, 2012-20), <http://www.qualityresearchinternational.com/socialresearch/>.

<sup>28</sup> Norman K. Denzin, *Interpretive interactionism*, 2nd ed.. ed. (London: London : SAGE, 2001).quoted in Amy K. Way, Robin Kanak Zwier, and Sarah J. Tracy, "Dialogic Interviewing and Flickers of Transformation: An Examination and Delineation of Interactional Strategies That Promote Participant Self-Reflexivity," *Qualitative Inquiry* 21, no. 8 (2015): 1, <https://doi.org/10.1177/1077800414566686>.

<sup>29</sup> Harvey, *Social Research Glossary*

between the participants as key in this type of narrative inquiry.<sup>30</sup> However, reflecting on why I have engaged with this research method in the first place, I would observe that I have been unable to see many salient aspects of my role as Director of the Student Law Office. Freire sees dialogue as 'a moment where humans meet to reflect on their reality as they make and remake it'.<sup>31</sup> By engaging in interviews in a dialogic manner, researchers can 'encourage participant perspective-taking and non-judgmental involvement that can lead to flickers of transformation'.<sup>32</sup> In my case, perhaps it was more a flicker of insight than transformation. For example, towards the end of the first dialogic interview with my colleague, it was stated that, taking over as director, I 'built a really good team of supervisors', which may seem a very obvious comment, but something which my co-interviewer, as a previous Director, had not consciously considered doing when she held the same role, but observed as characterising my manifestation of the role as Director. It was helpful that we both had a joint understanding of the research topic, and the narratives within this, as Moen suggests,<sup>33</sup> so that we could explore the 'otherness' of our approaches to the law clinic – what seemed an obvious step for me was not for her, in part due to her involvement as Director at a particular the time point on the continuum of the development of the clinic. For example, much of her time as director was spent developing the clinic handbook/manual in order that the clinic could gain a Legal Services Commission contract and Quality Mark and focussing on the clinic offering to students. It was at a time when the research agenda did not feature as an imperative for law school staff. Through the dialogic interview we both gained insights into what characterised

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<sup>30</sup> Moen, "Reflections on the Narrative Research Approach," 62.

<sup>31</sup> Ira Shor and Paulo Freire, "What is the "dialogical method" of teaching?," *Journal of Education* 169, no. 3 (1987): 13.

<sup>32</sup> Way, Kanak Zwier, and Tracy, "Dialogic Interviewing and Flickers of Transformation: An Examination and Delineation of Interactional Strategies That Promote Participant Self-Reflexivity," 1.

<sup>33</sup> Moen, "Reflections on the Narrative Research Approach."



our clinic leadership, and elements of each of our 'stories'. As qualitative scholars, we embrace the notion that the interview is not 'a mirror of the so-called external world, nor is it a window into the inner life of the person', but is rather 'a way of writing'<sup>34</sup>

Similarly, the interaction with clinicians from another University law clinic was not one of an 'interviewer/interviewee', subject/object nature, but rather an exchange of views, again in a dialogic style, with all parties as participants, forming a fresh perception of the experiences of the other. These two clinicians were also in a similar position to mine in one being the Director, and the other the founder of the law clinic.

The exploration of a shared experience with another academic/clinical supervisor who had had a similar lead role was invaluable, and the dialogic interviews, where we met together to discuss ideas and concepts, was surprisingly helpful. I could then examine this interaction together with the dialogic interview with another university law clinic, to explore the themes which emerge.

Frank uses a metaphor of sharing space – the researcher and the person telling the story occupying a shared space and genuinely participating.<sup>35</sup> In my case, the role of interviewer and interviewee were somewhat blurred. I see the interview as creating a truly shared space and the outcome is a co-created narrative.

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<sup>34</sup> Denzin, *Interpretive interactionism*, 25.

<sup>35</sup> Arthur W. Frank, "What Is Dialogical Research, and Why Should We Do It?," *Qualitative Health Research* 15, no. 7 (2005), <https://doi.org/10.1177/1049732305279078>.

## 2.2 Surprise, critique and reflexivity: three elements of authentic professional learning

I was startled by the power of the dialogic interview, and it's ability to encompass these three elements of professional learning. Frank, recalling the seminal work of Mead, points to the idea that when we talk, 'our speech calls out a response in us' and as respondents reply to interview questions or talk about their lives in ethnographic settings, their talk instigates processes that change their lives.<sup>36</sup> Even in the relatively short time engaging in the dialogic interview, echoes of the dialogues stayed with me and led to me further reflecting on my experiences as director and supervisor.

It could be argued that my approach does not fit wholly within the bounds of dialogic interview. The interviews form a relatively small part of my work, which could be viewed as a narrative inquiry. Is the narrative 'an approach, a method of inquiry, situated within the qualitative or interpretive research family', or rather, 'a frame of reference in the research process'? Moen <sup>37</sup> sees it as the latter, and in the sense that I have used it, I tend to agree. I am using narrative enquiry as a form of reference, in that I am asking 'what is my story, in terms of my understanding of my experience of the law clinic?' I have used dialogic interviewing as a means of eliciting something which enables me to reflect and be self-reflexive. The interview has become an artefact, to which I can apply a hermeneutic and interpretive approach. I am also drawing on knowledge of other research interviews I carried out to look at what students thought of their experiences in clinic, how other colleagues experienced clinic, and what lessons I can draw from this. My approach is qualitative,

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<sup>36</sup> Frank, "What Is Dialogical Research, and Why Should We Do It?."

<sup>37</sup> Moen, "Reflections on the Narrative Research Approach," 57.

interpretive and produces an insight into the complexity of running and teaching in an in-house University law clinic – essentially, to take an anthropological approach to the culture of clinical supervision. I have used the themes from these dialogic interviews and analysed them reflexively, to provide a thematic structure to this overarching reflection on practice.

Reflexivity is key to qualitative research, in that we have to maintain an awareness of the ways in which the process of researching intrinsically shapes the outcome. How is reflection different from reflexivity? Hibbert et al. see the latter as requiring “exposing or questioning our ways of doing”.<sup>38</sup> Reflexivity is considered an integral aspect of qualitative research. It involves understanding how the research process may shape its outcomes, reflecting upon the move through to certain conclusions. Reflection and reflexivity are sometimes used interchangeably, but Alvesson and Skoldberg provide a useful distinction, seeing reflexive research as a strand or version of reflective research, defining it as involving ‘reflection on several levels or directed at several themes’.<sup>39</sup> Whilst reflection is about looking back, reflexivity is ‘a process of self-awareness and scrutiny that is bidirectional’<sup>40</sup> and in terms of the research process, is about developing ‘transparency in the decision making process at multiple levels; personal, methodological, theoretical, epistemological ethical and political’.<sup>41</sup>

Hibbert et al. explore reflexivity further and describe reflexivity as related to, but ‘qualitatively different from’, reflection, perceiving reflexivity as essentially recursive, as a

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<sup>38</sup> P. Hibbert, C. Coupland, and R. MacIntosh, "Reflexivity: Recursion and relationality in organizational research processes," *Asia Pacific Journal of Marketing and Logistics* 5, no. 1 (2010): 48, <https://doi.org/10.1108/17465641011042026>.

<sup>39</sup> Mats Alvesson and K. Skoldberg, *Reflexive Methodology* (2009).

<sup>40</sup> Hilary Engward and Geraldine Davis, "Being reflexive in qualitative grounded theory: discussion and application of a model of reflexivity," *Journal of Advanced Nursing* 71, no. 7 (2015): 3, <https://doi.org/10.1111/jan.12653>.

<sup>41</sup> Engward and Davis, "Being reflexive in qualitative grounded theory: discussion and application of a model of reflexivity," 3.

process of 'bending back', with the researcher examining their own role in the context and process of the research.<sup>42</sup>

I reflect on the experience of being a clinic supervisor, from my dual role of director and supervisor in clinic, and from my position as researcher and generally this requires 'thick description'<sup>43</sup> and a phenomenological approach, with direct experience taken at face value as informing the research. This reflexivity can be very effectively applied to professional learning, where the view of the professional is challenged, but we are encouraged to engage with the design, process and action of change. In this sense, we move beyond single loop to double loop reflection, again engaging with this process of 'bending back'.

Whilst reflexivity has come to dominate social science methodology literature, the concept of diffraction as a methodology has been explored more recently. Barad sees diffraction as a method or practice that can be used to look at difference. It could be seen as a form of reflexive critique- the examination of material or concepts through a lens- but whereas 'critique' as a method is seen by Barad as 'operating in a mode of disclosure, exposure and demystification'<sup>44</sup> and categorised by Murris as destruction, diffraction is seen by Barad as 'a form of affirmative engagement' able to create patterns of understanding, what Murris sees as a process of both construction and destruction.<sup>45</sup> My experience of the interviews and their analysis suggests to me that elements of diffraction were created by the dialogue, enabling

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<sup>42</sup> Hibbert, Coupland, and MacIntosh, "Reflexivity: Recursion and relationality in organizational research processes," 1.

<sup>43</sup> Clifford Geertz, *Thick description: toward an interpretive theory of culture* (2002).

<sup>44</sup> Karen Barad, "Diffracting Diffraction: Cutting Together-Apart," *Parallax: Diffracted Worlds - Diffractive Readings: Onto-Epistemologies and the Critical Humanities* 20, no. 3 (2014): 187, <https://doi.org/10.1080/13534645.2014.927623>.

<sup>45</sup> Karin Murris and Vivienne Bozalek, "Diffraction and response-able reading of texts: the relational ontologies of Barad and Deleuze," *International Journal of Qualitative Studies in Education* 32, no. 7 (2019): 874, <https://doi.org/10.1080/09518398.2019.1609122>.

me to see what aspects of my practice came to the fore. This has led to the patterns of understanding presented in this thesis. The first iteration was a simple reflection on the experience I had as a supervisor in the Student Law Office. This moved to a more reflexive consideration of what that experience meant and how the challenges of clinical teaching could be problematized, based on the dialogic interview themes. Finally, through this process, I found myself making meaning of the process and experience of taking up the role of researcher, albeit a practitioner researcher, or as Dickinson, picking up on a term used in earlier work by Posner,<sup>46</sup> calls 'pracademic'.<sup>47</sup>

## 2.3 Emerging themes from dialogic interview

Having adopted the dialogic interview as a method, I then struggled to find existing research that was clear on the appropriate method for organising and analysing the themes specific to dialogic interview, but thematic analysis emerged overall as an appropriate process to examine the material.

### 2.3.1 The use of thematic analysis

Since their initial work in 2006, Braun and Clarke have provided a focus for developments in thematic analysis, expanding and clarifying on their original work. In their reflexive discussion-based piece of 2019, they explore further their original framework, in particular their conceptualisation of themes as 'patterns of shared meaning underpinned by a core concept'.<sup>48</sup>

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<sup>46</sup> Jill Dickinson, Andrew Fowler, and Teri-Lisa Griffiths, "Pracademics? Exploring transitions and professional identities in higher education," *Studies in higher education (Dorchester-on-Thames)* (2020), <https://doi.org/10.1080/03075079.2020.1744123>.

<sup>47</sup> Paul L. Posner, "The Pracademic: An Agenda for Re-Engaging Practitioners and Academics," *Public budgeting & finance* 29, no. 1 (2009), <https://doi.org/10.1111/j.1540-5850.2009.00921.x>.

<sup>48</sup> Virginia Braun, Victoria Clarke, and Nikki Hayfield, "'A starting point for your journey, not a map': Nikki Hayfield in conversation with Virginia Braun and Victoria Clarke about thematic analysis," *Qualitative Research in Psychology* (2019), <https://doi.org/10.1080/14780887.2019.1670765>.

They emphasise the reflexive process for the researcher; ‘The coding process requires a continual bending back on oneself – questioning and querying the assumptions we are making in interpreting and coding the data’<sup>49</sup> I found their initial guidance through a 6-step process useful, whilst very similar to that of Titchen,<sup>50</sup> and I combined the guidance from these authors into 6 simple steps.

Thematic analysis guidance synthesised
Stage 1 – immersion, iterative reading of texts
Stage 2 – first order constructs – coding data
Stage 3 - second order constructs – grouping into sub-themes
Stage 4- synthesis and theme development – grouping sub themes into themes, comparing themes, elaboration of themes
Stage 5- Linking the literature to themes, reconstructing into narratives
Stage 6- Critique of themes, reporting findings.

Figure 2: Thematic analysis

However, from a practical point of view, I found the pragmatic approach and guidance provided by Elliott more helpful, in conceptualising coding as a decision-making process, and that coding is essentially a way of mapping data ‘to provide an overview of disparate data that allows the researcher to make sense of them in relation to their research questions’.<sup>51</sup> In this doctoral work, there is not a mass of data, being made up of just three interviews. In terms of ‘chunking’ the data, I followed Creswell’s suggestion of coding in rounds, that is, coding paragraphs on first reading then refining the labels through repeated readings.<sup>52</sup>

<sup>49</sup> Virginia Braun and Victoria Clarke, "Reflecting on reflexive thematic analysis," *Qualitative Research in Sport, Exercise and Health* 11, no. 4 (2019), <https://doi.org/10.1080/2159676X.2019.1628806>.

<sup>50</sup> Angie Titchen, Development National Institute for Nursing. Centre for Practice, and Research, *Changing nursing practice through action research* (Oxford: Oxford : National Institute for Nursing, 1993).

<sup>51</sup> Victoria Elliott, "Thinking about the Coding Process in Qualitative Data Analysis.(Report)," *The Qualitative Report* 23, no. 11 (2018).

<sup>52</sup> John W. Creswell, *Qualitative inquiry and research design : choosing among five approaches*, Third ed.. ed. (Los Angeles: Los Angeles : SAGE Publications, 2013).

Initially material was coded with topic codes (first order constructs) then with analytical coding (the second order constructs).

I use these emerging themes identified through thematic analysis to discuss key aspects of clinical education.

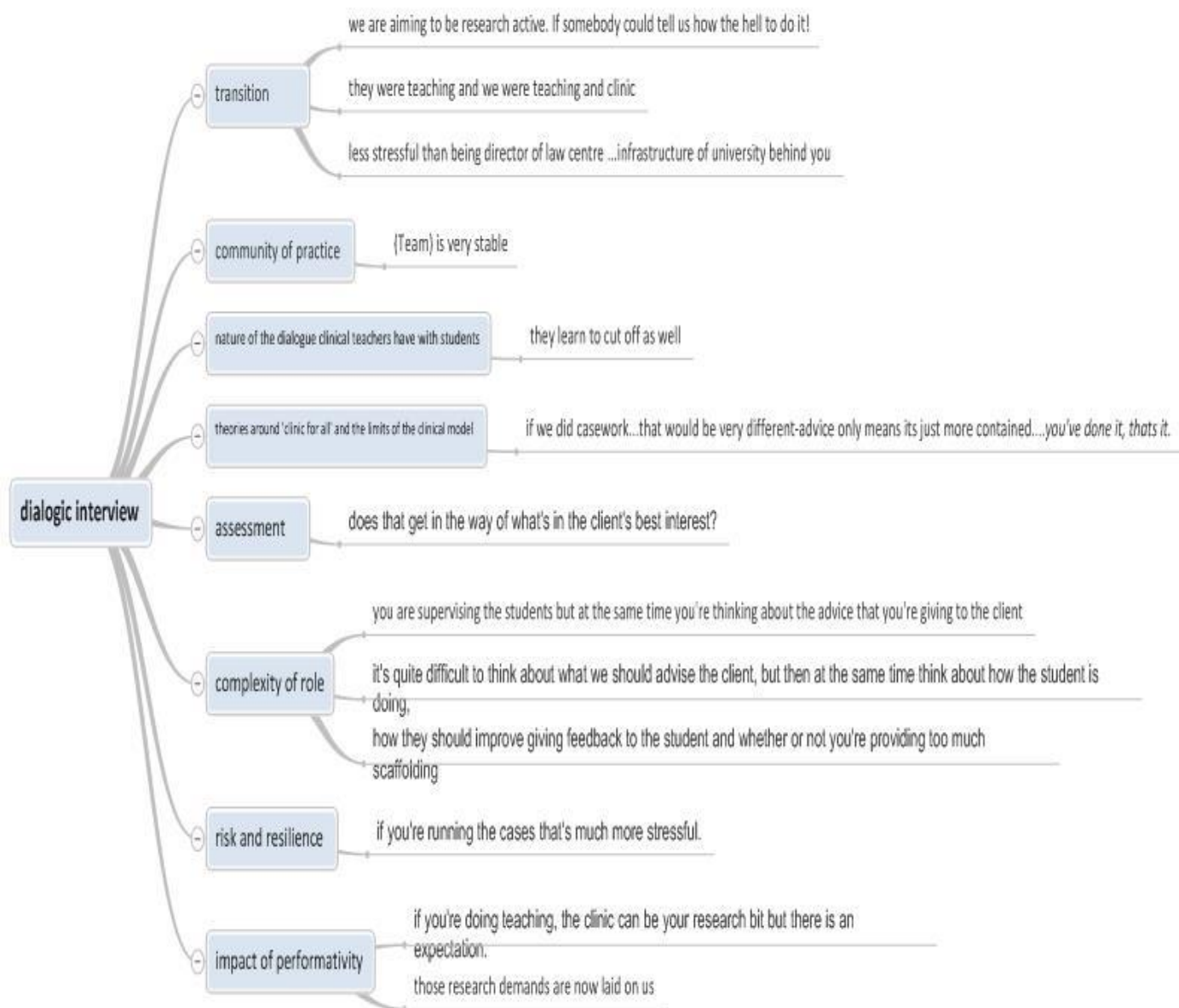


Figure 3: Themes from Dialogic interview 1



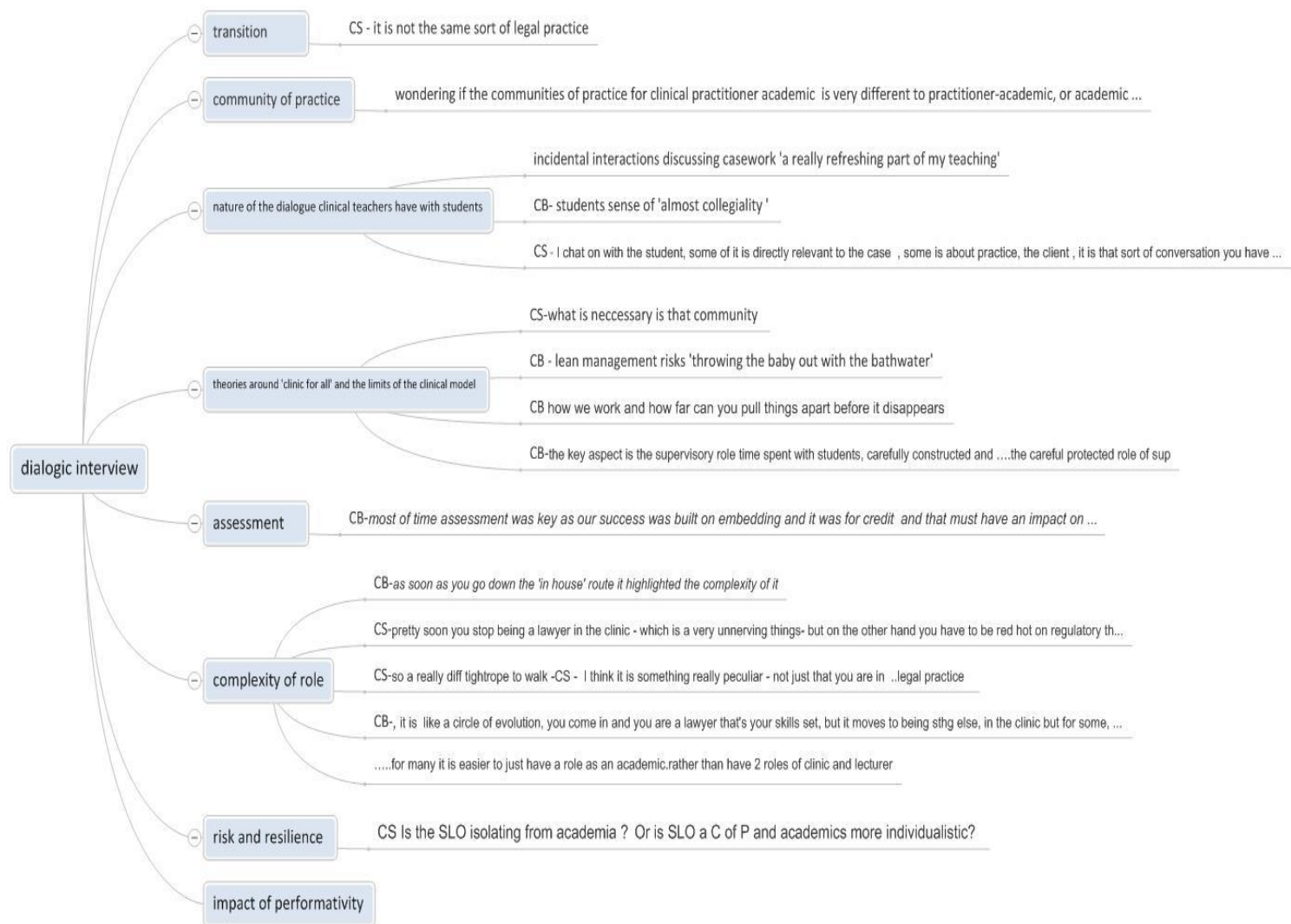


Figure 4: Themes from dialogic interviews 2 and 3

I then read the texts of the interviews several times before reflecting back on the temple structure and reviewing this as a framework on which the second order themes were mapped,

to show the more populated areas.

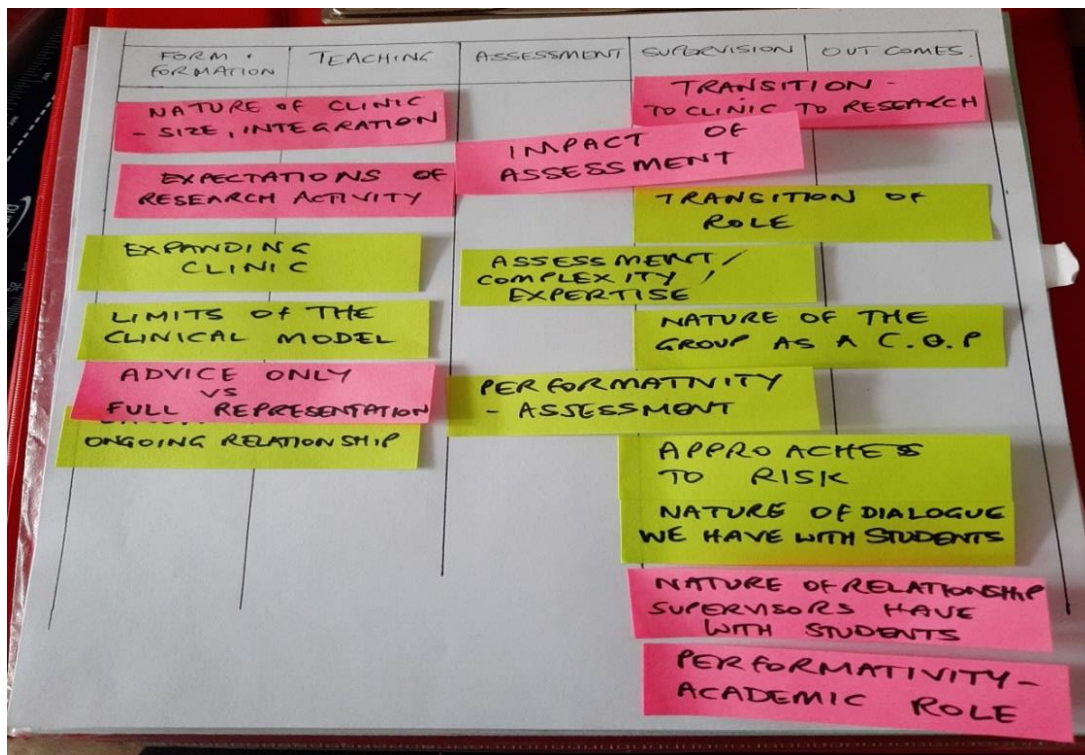


Figure 5 : Mapping themes onto the 'temple

From this mapping exercise I could see which themes came to the fore, and these are then explored in the reflective narrative. This is an iterative process, and one where there is no 'right' answer, as 'the aim is not to produce a perfectly consistently coded set' but to 'produce a meaningful account of the phenomenon that addresses key aspects of the research question and to do so in a systematic and transparent way so that the reader can see how concepts, themes or categories were developed'.<sup>53</sup> Without doubt, there is an element of circularity and subjectivity in the process I have adopted, but it is a process which has enabled the weaving of a narrative, and an exploration of experience.

<sup>53</sup> Jane Ritchie et al., *Qualitative research practice : a guide for social science students and researchers*, Second edition / [edited by] Jane Ritchie, Jane Lewis, Carol McNaughton Nicholls, Rachel Ormston.. ed. (Los Angeles : SAGE, 2014), 278.

## 2.4 Methodology – conclusion

According to Gregersen, 'we are at a stage in the evolution of clinical legal education research where we are, quite rightly, being challenged to make clear links to methodology'.<sup>54</sup> Like Gregersen's work which uses autoethnography as a methodology, this work extends the research methods used to explore the experiences of clinical supervision and embraces clinic's reflexive traditions. Dialogic interviewing has enabled me to incorporate my experience as the researcher as well as that of others who have shared similar experiences, and to encompass what Coles calls 'the complexity of some lived moments of life'.<sup>55</sup>

### Chapter 3 - Pillar 1 -Form and formation - Development of clinical legal education, and the Student Law Office

One of the five pillars of the temple was 'form and formation', which includes the nature of clinic, and the roots from which it developed and the unique position of Northumbria's Student Law Office:



As the multiple national and international awards it has received confirm, the clinical legal education programme at Northumbria Law School is extraordinary ...Northumbria is an excellent example of how a clinical programme can transform the legal education experience for students and of the various ways law schools around the globe are innovating to better ready their students for working in a radically different environment than their predecessors did.<sup>56</sup>

In this 2015 report on the potential of clinical legal education in Ireland, Northumbria's Student Law Office was the only clinic outside Ireland to be featured, and Donnelly's praise

<sup>54</sup> Elaine Gregersen, "The Lived Experience of a University Law Clinic Supervisor: An Autoethnographic Inquiry," (ProQuest Dissertations Publishing, 2019), 153.

<sup>55</sup> R. Coles, *The call of stories: Teaching and the moral imagination* (Boston: Houghton Mifflin, 1989), 128.

<sup>56</sup> Larry Donnelly, *Clinical Legal Education in Ireland: Progress and Potential* NUI Galway (Galway, Ireland, 2015), [https://app.pelorous.com/media\\_manager/public/138/Clinical-Legal-Education-Report.pdf](https://app.pelorous.com/media_manager/public/138/Clinical-Legal-Education-Report.pdf).

for the clinic as 'extraordinary' also reflect the unique role of clinical supervisors. In this section, the historical background to clinical legal education is explored, focussing on the UK experience, but through the lens of the Northumbria teaching model as illustrated by the Student Law Office.

### 3.1 Defining clinical legal education (CLE) as a method of teaching - Pillar 2.

'The life of the law has not been logic: it has been experience'<sup>57</sup>

According to the AALS,

Clinical education is first and foremost a method of teaching. Among the principal aspects of that method are that students are confronted with problem situations of the sort that lawyers confront in practice; the students deal with the problem in role; the students are required to interact with others in attempts to identify and solve the problem; and, perhaps most critically, the student performance is subjected to intensive critical review.<sup>58</sup>

CLE could be seen as a broad church, encompassing diverse formats such as Streetlaw, simulations, and problem-based learning as well as live client work. This breadth and diversity of definition often reflects the viewpoint of the writer and their experiences.

Some see aspects such as social justice /access to justice as essential pre-requisites; 'Clinical legal education is a resource intensive clinical pedagogy that not only bridges the gap between legal education and professional skills but also promotes access to justice'.<sup>59</sup>

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<sup>57</sup> Oliver Wendell Holmes, *The common law*, [New ed.]. ed. (London, Melbourne: London, Melbourne, Macmillan, 1968).

<sup>58</sup> "Report of the Committee on the Future of the In-House Clinic," *Journal of Legal Education* 42, 4 (1992): 511.

<sup>59</sup> Tribe Mkwebu, "Clinical pedagogy : a systematic review of factors influential in the establishment and sustainability of clinical programmes and a grounded theory explication of a clinical legal education case study in zimbabwe," (ProQuest Dissertations Publishing, 2016), 4.

Whilst for some clinicians, this can be the primary driver for their clinical work, this has not been the case for Northumbria Student Law Office, where the position of the clinic within the mainstream curriculum has brought the educational aspect to the fore.

Others cite reflection as a key component, rather than social justice; Duncan defines clinical methods as;

those which require students to learn by undertaking the tasks that lawyers undertake in such a way that they have an opportunity to reflect on the law with which they work, the circumstances and relationships they encounter in that work and the development of their own skills and understanding.<sup>60</sup>

Duncan includes simulated work in his definition; however, my own focus is on clinical teaching which involves a real client, as set out in my early work focussed on representing clients in housing possession cases; 'At the heart of clinical legal education is a real client. It is the presence of a real client that distinguishes (it) both from traditional legal education....and from practical legal skills training'. This is supported by the AALS; 'The live-client clinic adds to the definition the requirement that at least some of the interaction in role be in real situations rather than in make-believe ones...'

Grimes too includes conducting casework as a key aspect;

A learning environment where students identify, research and apply knowledge in a setting which replicates, at least in part, the world where it is practised.... It almost inevitably means that the student takes on some aspect of a case and conducts this as it would ... be conducted in the real world.<sup>61</sup>

The focus of this research is on in-house clinical provision, and the AALS definition provides a detailed definition commenting specifically on in-house, live-client clinical education;

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<sup>60</sup> N Duncan, "Ethical Practice and Clinical Legal Education," *International Journal of Clinical Legal Education* 7 (2005 2014): 8.

<sup>61</sup> Grimes R., 'The Theory And Practice Of Clinical Legal Education' in J. Webb and C. Maugham (eds.) *Teaching Lawyers' Skills* (1996) 138.

The in-house clinic further supplements the definition of clinical education by adding the requirement that the supervision and review of the student's actual case (or matter) be undertaken by clinical teachers rather than by practitioners outside the law school.<sup>62</sup>

Whilst in fact a plethora of models have developed within Universities, the role of the supervisor remains key, and I will be examining not only the role of the academic clinical supervisor in the context of live client work, but also of the challenges posed by the changing university environment.

### 3.2 - Pillar 2 -Clinic and its many forms – historical development of clinic teaching

As stated, the first two capstones on the 'pillars' of my temple refer to 'form and formation', and 'teaching'. The history of the clinical movement, particularly in the early days of development in the UK, can illuminate how remarkable the formation and subsequent success of the clinic at Northumbria was, in light of the early struggles against the existing academic norms, and how innovative the teaching method was.



#### 3.2.1 The influence of the US model

Clinical legal education originated in the USA, with growing criticism of the prevailing 'casebook' method of teaching. In his 1917 article, Rowe proposed the transformation of the law school curriculum with the integration of CLE into the curriculum.<sup>63</sup> The move away from the Langdellian methods of studying law and towards the experiential approach began ,

<sup>62</sup> "Report of the Committee on the Future of the In-House Clinic," 511.

<sup>63</sup> Jon C. Dubin Margaret Martin Barry and A. Joy Peter, "CLINICAL EDUCATION FOR THIS MILLENNIUM: THE THIRD WAVE," *Clinical Law Review* 7 (2000): 6.

although even with the efforts of Jerome Frank through the 1920s and 30s, growth was stagnant until the 1960's, when, as Professor Dean Hill Rivkin has noted, 'It was the societal legacy of the sixties ... that most shaped clinical legal education. The fervor of the sixties penetrated law schools quite passionately'.<sup>64</sup>

However, the more widespread acceptance of the value of clinical teaching took time to become firmly established, with the UK lagging behind the advances in the USA, and Barry et al. describe this period through to the 1990's as 'the second wave of clinical legal education',<sup>65</sup> as clinical teaching began to expand and permeate outside the United States.

### 3.2.2 Regional and jurisdictional variations

Through the 1980's, as clinical teaching as a methodology became well established in the USA, the early shoots took root in the UK. It is widely accepted that the Universities of Kent<sup>66</sup> and Warwick<sup>67</sup> were the earliest to establish clinics. At Kent, the clinical method of teaching was introduced in 1972,<sup>68</sup> and even as early as 1975 there was the possibility for students to convert their clinic work to become credit bearing.

Kent had a well-established summer vacation external placements scheme,<sup>69</sup> and the on-campus clinic had a resident solicitor who was a part time lecturer. The director was given workload for time at the clinic, but the other six staff had no allowance for time spent in the clinic. They also had a full-time administrator. In the period 1974-75, there were 35 students

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<sup>64</sup> Minna J. Kotkin and Dean Hill Rivkin, "Reflections from two boomers.(Papers from an AALS Conference Workshop on Clinical Legal Education at a Generational Crossroads)," *Clinical Law Review* 17, no. 1 (2010): 340.

<sup>65</sup> Margaret Martin Barry and Peter, "CLINICAL EDUCATION FOR THIS MILLENNIUM: THE THIRD WAVE," 12.

<sup>66</sup> William M. Rees, "Clinical legal education: An analysis of the university of Kent model," *The Law Teacher* 9, no. 3 (1975), <https://doi.org/10.1080/03069400.1975.9992435>.

<sup>67</sup> Cath Sylvester, "Bridging the Gap? The Effect of Pro Bono Initiatives on Clinical Legal Education in the UK," *International Journal of Clinical Legal Education* 3 (2014), <https://doi.org/10.19164/ijcle.v3i0.116>.

<sup>68</sup> R. J. Spjut, "'Praxis' and prudence: Reforming clinical legal education at the university of Kent," *The Law Teacher* 11, no. 2 (1977), <https://doi.org/10.1080/03069400.1977.9992470>.

<sup>69</sup> Rees, "Clinical legal education: An analysis of the university of Kent model."

participating in the clinic. The clinic seemed to have got off to a promising start – but this was short-lived.

### 3.2.3 Clinic as radical pedagogy - early resistance to CLE

In the current era of CLE expansion, it is easy to overlook the resistance that those early enthusiasts of clinic had to overcome; after such a promising start, the live client clinic at Kent ran for just two years from 1974 to 1976, but there was vociferous opposition from some quarters and the Kent clinic closed in 1977.<sup>70</sup> As a result, it was almost two decades before the Kent Law Clinic re-appeared, although staff and students working with volunteer lawyers continued to provide free public legal services through various external clinics.<sup>71</sup> These gradually began to re-integrate the public service into the curriculum and in 1992 merged into the Kent Law Clinic in its current form. Kent currently runs a successful clinic with a combination of volunteers and credit bearing modules. During the 1980's, only four university law clinics remained in existence, at Birmingham, Warwick, South Bank and Northumbria.<sup>72</sup>

### 3.2.4 'Confusion rather than enlightenment'<sup>73</sup> – the Critics of Kent

What was the challenge which led to the demise of the original Kent clinic? Can we learn anything from this piece of clinic history? According to Spjut, a ferocious critic of the time, the proponents of clinic insisted on integration of clinical elements into 'every stage of legal education' and the result was 'a travesty of academic study and legal practice'.<sup>74</sup> Spjut castigates the idea of the unification of theory and practice in this way. He bemoans the fact that the clinic, particularly through representing 'the lower classes', has become

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<sup>70</sup> Spjut, "'Praxis' and prudence: Reforming clinical legal education at the university of Kent," 99.

<sup>71</sup> Andy Unger and Alan Russell, "Clinical Legal Education Conference: Quality & Supervision," *International journal of clinical legal education* 24, no. 1 (2017): 180, <https://doi.org/10.19164/ijcle.v24i1.581>.

<sup>72</sup> Sylvester, "Bridging the Gap? The Effect of Pro Bono Initiatives on Clinical Legal Education in the UK."

<sup>73</sup> Spjut, "'Praxis' and prudence: Reforming clinical legal education at the university of Kent," 95.

<sup>74</sup> Spjut, "'Praxis' and prudence: Reforming clinical legal education at the university of Kent," 93.



‘impregnated with the politics of the community’, giving as examples cases where the clinic has represented ‘patients in a mental hospital and against a local authority’, to his apparent horror. Spjut goes on to argue for a complete separation of practice and politics in that ‘the student, in cases where there is an open conflict between a client from the working classes and the established authority, must view his legal skills as neutral to the interests of both parties’.<sup>75</sup>

Perhaps Spjut, writing in 1977, was in the twilight of the traditional university, characterised by John Henry Newman as a place where ‘the intellect may safely range and speculate, sure to find its equal in some antagonistic activity...’<sup>76</sup> and rooted in the belief in the university as a place of ‘universal knowledge’ enabling the pursuit of a broad liberal education. Hepple provides an articulate counter to this, arguing that the division of ‘liberal’ and ‘professional’ legal education was a false antithesis, even referring to Northumbria’s exempting degree by way of example of a successful integration of academic and vocational study.<sup>77</sup> Before long, government policy shifted towards the expansion of university for the masses, and, with the introduction of student loans, the ideas around the ‘value’ of a university degree in enhancing employability.<sup>78</sup> Critically, this experience of the Kent Law Clinic illustrates the potential fragility of clinic, and the sense of ‘otherness’ with which it can be labelled.

This debate about the purpose and teaching of the law degree continued, with law schools caught between the relative freedom of a liberal (or academic) approach, which in many ways gave great freedom in terms of course content, and in contrast, the constraints imposed

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<sup>75</sup> Spjut, ‘“Praxis” and prudence: Reforming clinical legal education at the university of Kent,’ 96.

<sup>76</sup> John Henry Newman, *The Idea of a University* (London Aeterna Press, 2015, 1852).

<sup>77</sup> Bob Hepple, ‘The Renewal of the Liberal Law Degree,’ *The Cambridge Law Journal* 55, no. 3 (1996), <https://doi.org/10.1017/S0008197300100479>.

<sup>78</sup> Andrew Francis, ‘Legal Education, Social Mobility, and Employability: Possible Selves, Curriculum Intervention, and the Role of Legal Work Experience,’ *Journal of Law and Society* 42, no. 2 (2015), <https://doi.org/10.1111/j.1467-6478.2015.00704.x>.

by the professional bodies (who have relatively little experience of teaching, learning and assessment in Higher Education) on the course content for a qualifying law degree, culminating in the most recent proposals for the Solicitors Qualifying Examinations, potentially reducing the learning threshold of lawyering to being examined through multiple choice questions.<sup>79</sup> What enabled Northumbria's law clinic to flourish within this ever oscillating paradigm? Is there a point beyond which integration of academic study and legal practice are no longer beneficial?

### 3.2.5 Growth of 'pro bono and development of 'in house' law clinics

Whilst 'pro bono' as an activity in law schools grew through the early nineties, the number of law schools with in-house live client clinics remained small. Grimes's survey of law schools in the academic year 1994-5 found that of 79 universities surveyed, only 8 had live client clinics, and of those, only two (both new universities) offered full representation- presumably one of these being Northumbria.<sup>80</sup> New universities were five times more likely to offer live client clinics than old universities. In Browne's survey of 1999, there were still only 12 respondents out of 73 who had clinics operating within the law school, and of 29 law schools who participated in pro bono activity, in nine were students assessed and only one – which again seems likely to be Northumbria Student Law Office - was compulsory as opposed to voluntary.<sup>81</sup> So whilst there may have been growth in 'pro bono activity' generally, the development of integrated live client clinics of the type that Spjut railed against was much

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<sup>79</sup> For a critique of this, see Elaine Hall, "Glass houses: how might we decide on a "good enough" assessment to become a solicitor?," *The Law Teacher: From LETR to SQE: Reforming legal education and training in England and Wales. Guest Editors: Luke Mason and Jess Guth* 52, no. 4 (2018), <https://doi.org/10.1080/03069400.2018.1526477>.

<sup>80</sup> Richard Grimes, Joel Klaff, and Colleen Smith, "Legal skills and clinical legal education - a survey of undergraduate law school practice," *The Law Teacher* 30, no. 1 (1996), <https://doi.org/10.1080/03069400.1996.9992939>.

<sup>81</sup> Sara Browne, "A survey of pro bono activity by students in law schools in England and Wales," *The Law Teacher* 35, no. 1 (2001), <https://doi.org/10.1080/03069400.2001.9993072>.

more limited, making Northumbria's clinical offering even more remarkable. Even as late as 2014 only around 25% of respondents to a LawWorks survey indicated that their clinical work was assessed.<sup>82</sup> In contrast, for the main cohort of students participating in the Student Law Office, their work in clinic was not just assessed, but has represented as much as 37% of their final year mark, and this has been the case for many years. Rice argues that 'grading distracts us from our teaching',<sup>83</sup> but if 'assessment defines what students regard as important',<sup>84</sup> this weighting within their studies for clinical work raises its value for students. Indeed, McKeown and Hall argue that unless clinical performance is assessed and weighted such that clinic performance impacts the final grade, we are not really valuing clinic as being important to student learning at all.<sup>85</sup> Whilst some elevate social justice in the form of pro bono public within the hierarchy of clinical goals,<sup>86</sup> it can equally form part of 'the unconscious curriculum',<sup>87</sup> and enable law students to at least consider the impact of the law within society. I return to the theme of assessment in clinic, and why a fair assessment in clinic is also inevitably a complex one, in Chapter 6.

### 3.3 Northumbria's early history of clinic - educative potential for more marginalised students

Interestingly, this integration of clinic throughout the curriculum, rejected by Spjut, was the very aspect which Northumbria embraced. But there are several factors which may have

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<sup>82</sup> D. Carney et al., *The LawWorks Law School Pro Bono and Clinic Report 2014* (2014), [www.lawworks.org.uk](http://www.lawworks.org.uk). More recent LawWorks reports have not included details on assessment in university law clinics.

<sup>83</sup> Simon Rice, "Assessing - But Not Grading - Clinical Legal Education," *SSRN Electronic Journal* (2007): 14, <https://doi.org/10.2139/ssrn.1061622>.

<sup>84</sup> Sally Brown, *Assessing learners in higher education*, ed. Peter Knight (London: London : Kogan Page, 1994), 12.

<sup>85</sup> P. McKeown and E. Hall, "If we could instil social justice values through clinical legal education, should we?," *Journal of International and Comparative Law* 5, no. 1 (2018): 12.

<sup>86</sup> Donald Nicolson, "'Our roots began in (South) Africa': Modelling law clinics to maximise social justice ends," *International Journal of Clinical Legal Education* 23, no. 3 (2016): 87, <https://doi.org/10.19164/ijcle.v23i3.532>.

<sup>87</sup> McKeown and Hall, "If we could instil social justice values through clinical legal education, should we?."

contributed to the relative success of clinic at Northumbria law school, in addition to the simple benefit of the passage of time. As Mkwebu notes, 'The older the university is and the more length of time one has taught at an institution, the bigger is the chance of having a faculty that view clinical legal education as untested and unorthodox'.<sup>88</sup> Originally a polytechnic, where historically there was a focus on teaching for professional practice, Northumbria (or Newcastle Polytechnic as it was pre-1992)<sup>89</sup> law school was relatively unshackled by the pressure to produce research for national comparative assessment.<sup>90</sup> Teaching staff tended to be practitioners drawn from the local legal profession, rather than moving through the more traditional route of PhD student up to a position as a lecturer. Northumbria law school staff did not tend to be career academics, valued for their research, but practitioners valued for their practical expertise, producing practitioner and teaching texts, and this access to practitioner expertise was, to some extent, Northumbria's unique selling point.

A key aspect of this was the support of staff for the clinic, indeed, for innovation in the curriculum generally. Northumbria had such a clinic as early as 1990, which I consulted as a mature law student involved in a contract dispute. At this time, this was a voluntary clinic, and it wasn't until around 1992 that the highly innovative exempting degree at Northumbria started, with the introduction of the new Legal Practice Course (LPC) replacing the old Law Society Final examinations around 1993.<sup>91</sup> The exempting degree incorporated the LPC skills into a four-year qualifying law degree (undergraduate LLB plus vocational LPC), with clinic

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<sup>88</sup> Tribe Mkwebu, "Unpacking Clinical Scholarship: Why Clinics Start and How They Last," *Asian Journal of Legal Education* 4, no. 1 (2017): 64, <https://doi.org/10.1177/2322005816662397>.

<sup>89</sup> NOTE: Formerly Newcastle Polytechnic, formed from the merger of Rutherford College of Technology, the College of Art & Industrial Design and the Municipal College of Commerce

<sup>90</sup> The first RAE took place in 1986. It was replaced by the Research Excellence Framework (REF) in 2014 <https://www.ref.ac.uk/2014/>

<sup>91</sup> Hugh Brayne, "LPC skills assessments - a year's experience," *Law Teacher* 28, no. 3 (1994): 227.

forming a crucial part. One attraction for students was that they were exempted from taking the Legal Practice Course, and as a package, there was a financial saving in taking the exempting degree in comparison to taking the degree and then the LPC course. The other attraction was the clinical element. Students would prepare for working in the clinic with a clinic-orientated module in the third year, with the final year in the Student Law Office forming the capstone<sup>92</sup> to the degree, at Masters Level.

Only support from the highest level in the law school could have brought such a radically innovative programme to fruition. As outlined by Hall in his memorial piece, the role of Professor Philip Kenny, Dean of the Law School at Northumbria University at that time, was key, recognising from early on the importance of clinic. Professor Kenny was a practising lawyer, who remained a consultant at a well-known local leading law firm whilst in his role as Dean, and supervised students in the law clinic, thereby remaining 'hands-on' in clinic activities. This involvement of senior members of staff in the clinic, working with students on casework, continues to this day.<sup>93</sup> From its inception in the 1980's through the following 30 years, the Student Law Office could rely on support from the Dean of the Northumbria Law School, indeed, the two deans subsequent to Professor Kenny both held the role of Director of the Student Law Office before moving on to the higher echelons of the Law School, and their understanding of the needs and risks associated with running an in-house law clinic was invaluable.

Support for the clinic from senior staff provides protection in many ways, from allowing staff sufficient time for what is an extremely time consuming teaching method, to being willing to

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<sup>92</sup> Judith McNamara et al., "Capstones as transitional experiences," *Legal Education Review* 25, no. 1 (2015).

<sup>93</sup> Jonny Hall, "In Memoriam - Philip Kenny," *International Journal of Clinical Legal Education* 23, no. 2 (2016), <https://doi.org/10.19164/ijcle.v23i2.507>.

bear the inherent risks associated with live client work – risks that could pose a threat not just to the individual supervisor, or the law clinic, but the law school itself, or even the university (for example the Medill University case, where the Innocence project was accused of manipulating suspects into making false confessions, and led to NorthWestern University being sued for \$40 million).<sup>94</sup>

A further barrier to the development and expansion of in-house law clinics is the high cost, from the point of view of physical resourcing, as seen in this description of the Student Law Office;

It is expensive to run a law clinic that is embedded in the curriculum with its own dedicated administrator, permanent qualified solicitor supervisors (alongside other lawyers from the School), dedicated office space with more than 70 computer workstations, six interview rooms and connected library.<sup>95</sup>

In addition to the physical infrastructure, there is of course the level of teaching resource required, a point dealt with in more detail below.

### 3.4 The Northumbria model of clinical legal education

If one were to look to describe the recent clinical offering at Northumbria, it could be encapsulated as follows;

1. 'In-house', in the sense of within the curriculum.
2. For academic credit – i.e. assessed.
3. With purpose-built facilities housed within the law school.
4. Administrative support throughout the year.
5. Funded through the university budget.

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<sup>94</sup> "Medhill School of Journalism ", [https://en.wikipedia.org/wiki/Medill\\_School\\_of\\_Journalism](https://en.wikipedia.org/wiki/Medill_School_of_Journalism).

<sup>95</sup> Hall, "In Memoriam - Philip Kenny," 5.

6. Compulsory for the majority of students, therefore a large cohort. (Offered as an option in a modified format for other students) No selection so students of a range of academic abilities.
7. Supervisors are generally members of staff on permanent academic contracts.
8. Legally qualified supervisors have practising certificates.
9. Subgroup of academic staff ('solicitor tutors') with specific roles to provide case cover out of term time/to cover staff absence, and office management, such as checking post (out of term time).
10. Staff specifically allocated teaching time for clinical supervision (as well as hours for associated roles such as module tutors).
11. Includes full casework/reserved work<sup>96</sup> as well as advice.

This group of characteristics are specific to Northumbria; university law clinics may include any combination of these characteristics, although the role of solicitor-tutor is distinctive to Northumbria.

### 3.5 Pillar 3 - Student participation and outcomes -Intra or extra-curricular?

Intra curricular clinic has been attacked for privileging student learning over social justice,<sup>97</sup> and for the consequent focus on assessment and grading as an overriding motivation for students, rather than a commitment to justice. However, bringing the clinic work within the curriculum provides some element of permanence, as well as resources in the form of staffing as well as physical space. Students, lawyers, and clinical



<sup>96</sup> [legalservicesboard.org.uk/reserved-legal-activities](https://legalservicesboard.org.uk/reserved-legal-activities)

<sup>97</sup> Donald Nicolson, "Legal education, ethics and access to justice: forging warriors for justice in a neo-liberal world," *International Journal of the Legal Profession: Legal Education* 22, no. 1 (2015): 13, <https://doi.org/10.1080/09695958.2015.1047840>.

supervisors are generally time-poor, and forced to prioritise workload. In particular, many Northumbria students are from a socio-economic background which obliges them to work to fund their studies, reducing the opportunity to engage with volunteering for clinical activities. The other aspect to the intra-curricular nature of clinic at Northumbria is the compulsory aspect, in contrast to most other university clinical programs which tend to be optional within the curriculum, or voluntary and outside the curriculum. So traditionally, all students on the four-year exempting law degree would participate in the Student Law Office clinical program, weighted academically at over a third of their final year marks. As a result, many students who might have been filtered out of the opportunity to participate in clinic, either for financial reasons, or, where law schools carry out selection on the basis of student academic grades to date, could participate in clinic. In terms of outcomes, examination of results suggests that students who are high achievers academically do not necessarily replicate that high level of achievement in clinic, and moreover, students from less advantaged backgrounds can benefit the most from the clinic experience.<sup>98</sup>

Undoubtedly, the longevity of the law clinic at Northumbria has been its position at the heart of the degree, forming a capstone taught by academic supervisors, and valued by students. However, the intra-curricular model has provided a strong and flexible base from which to create variations on the central offering, some of which do not form a compulsory part of the curriculum, and are offered as credit bearing options, or voluntary experiences. With a base of experienced clinical supervisors, it has been possible to create hybrid clinics for elective

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<sup>98</sup> Elaine Hall Johnny Hall Cath Sylvester Carol Boothby, "To Him That Hath, More Shall Be Given": Ethical Issues Arising from the Selection of Students for Legal Clinic Programmes" (International Legal Ethics Conference Fordham University School of Law New York 14-16 July 2016).



students in partnership with external law firms,<sup>99</sup> partnerships with local CABs, third sector organisations such as Shelter <sup>100</sup> as well as Streetlaw projects.

### 3.6 Funding law clinics

Positioned as a credit bearing part of the curriculum, the Student Law Office has been funded through the Law School's budget, including (in addition to the teaching staff time) the office space, IT systems and support, and perhaps most importantly, the provision of administrative support, ensuring the smooth running of the law clinic. However, in round 2002, Northumbria Student Law Office applied for a Quality Mark from the Legal Services Commission (which replaced the Legal Aid Board from 1<sup>st</sup> April 2000)<sup>101</sup> and gained specialist Quality Marks in Housing, Welfare Benefits and Employment.<sup>102</sup> This involved the then Director preparing an office manual which was compliant with the detailed and stringent requirements of the franchise, enabling the Student Law Office to gain a Quality Mark. Once this was achieved, the office was audited regularly by the Legal Services Commission.

Funding from the legal aid work was held in a separate account, but university finances struggled with this accumulating fund, being used to annual budgets which were fully accounted for by year end. Further concern was whether this income stream would be seized on by the university financiers to subsidise the mainstream work of the law clinic. Fortunately, this never transpired, and in the event, the clinic ended its relationship with the Legal Services Commission when changes to the tendering process and in particular, the requirement for block contracting. Having to achieve at least 50 'matter starts' annually in each legal area,

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<sup>99</sup> [benhoarebell.co.uk/legal-advice-byker-shortlisted-for-award](http://benhoarebell.co.uk/legal-advice-byker-shortlisted-for-award)

<sup>100</sup> [northumbria.ac.uk/research/case-studies/student-law-office-benefits-students-and-the-community/](http://northumbria.ac.uk/research/case-studies/student-law-office-benefits-students-and-the-community/)

<sup>101</sup> [discovery.nationalarchives.gov.uk/details/r/C16781](http://discovery.nationalarchives.gov.uk/details/r/C16781)

<sup>102</sup> C Boothby, "Duty Bound? Court Possession Schemes and Clinical Education," *International Journal of Clinical Legal Education*, no. 7 (2005).

meant that it was no longer viable for the Student Law Office to participate in the scheme, as the annual number of cases eligible for legal aid in a particular specialist area such as housing would never be as high as this.

What does this tell us about external funding and clinical legal education? For one thing, that reliance on external funding can be precarious. Perhaps also that, whilst in house law clinics are advertised as mimicking practice, there are risks in clinics moving too far towards a real practice model, for example, in becoming dependent on external funding for their clinic work with students.<sup>103</sup> In Northumbria's case, 'exempting' students on the integrated course generated significant funding for the university through course fees— and the Northumbria law clinic has never had to argue for this type of core funding. Establishing a law clinic is one thing; sustaining it over time is another. Generally, Universities make cost savings through larger class sizes, making large group lectures far cheaper than small group working. The staffing resources required for live client work are on another scale altogether. The Northumbria law school model has remained at the heart of the degree, in more or less the same form, for many years. As Mkwebu points out, 'the key challenge to greater use of CLE pedagogy remains its resource intensive nature'.<sup>104</sup> Yet external funding can be unreliable, and the Student Law Office was not alone in experiencing the fickle nature of legal aid funding via central government.<sup>105</sup> As clinic becomes more widely accepted, and indeed demanded by students, (in fact becomes a 'given') rolling out sustainable provision to all law students

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<sup>103</sup> Elaine Campbell and Carol Boothby, "University law clinics as alternative business structures: more questions than answers?: Edited by Francis King," *The Law Teacher: Learning/Technology in Legal Education*. Guest Editor: Paul Maharg 50, no. 1 (2016), <https://doi.org/10.1080/03069400.2016.1149367>.

<sup>104</sup> Mkwebu, "Unpacking Clinical Scholarship: Why Clinics Start and How They Last," 40.

<sup>105</sup> Barbara Preložnjak and Juraj Brozović, "The financial challenges of clinical legal education: an example from a Zagreb law clinic," *International Journal of Clinical Legal Education* 23, no. 4 (2016), <https://doi.org/10.19164/ijcle.v23i4.526>.

for such resource intensive work presents a challenge<sup>106</sup> which is only starting to be addressed in the UK university law clinics.

### 3.7 The Student Law Office model at Northumbria – a mixed diet

Whilst student numbers expanded, with around 120 students in 2005<sup>107</sup> the basic ‘cell’ of the Student Law Office remained the same – one supervisor to around 6 students, known as a ‘firm’. Until 2018/19 academic year, supervisors were practitioners, and there were, for example, no ‘policy clinics’, (which can be run by non-practitioners who do not require a practising certificate). The model has generally been one based on live client casework. The nature of this casework has been diverse, from criminal appeals where students rarely meet face to face with their client, who is often serving a prison sentence, to housing and family cases where clients are at the forefront. The clinic has also offered advice in business and commercial work, a controversial move in the eyes of some, who based their rationale for clinic on a social justice argument. The Student Law Office approach to this was relatively robust<sup>108</sup> – clinic is embedded within the curriculum, and it benefits students to have a range of opportunities, reflecting the range of practice areas. Supervisors pre - select cases within their area of speciality (notably selection of cases was another aspect criticised by Spjut in the caustic piece on Kent Law Clinic).<sup>109</sup> As the law clinic has represented around 37% of the majority of students’ final year mark, it follows that students would be devoting significant amounts of time to their clinic work, being expected to spend around 10-15 hours per week on their clinic work (many spending far more). Whilst much of this can be categorised as self-

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<sup>106</sup> Martin Katz, "Understanding the Costs of Experiential Legal Education," *SSRN Electronic Journal* (2014), <https://doi.org/10.2139/ssrn.2486707>.

<sup>107</sup> Boothby, "Duty Bound? Court Possession Schemes and Clinical Education."

<sup>108</sup> Elaine Campbell, "A dangerous method? Defending the rise of business law clinics in the UK," *The Law Teacher* 49, no. 2 (2015), <https://doi.org/10.1080/03069400.2015.1004254>.

<sup>109</sup> Spjut, "'Praxis' and prudence: Reforming clinical legal education at the university of Kent."

directed study, the work produced by clinic students where they are working on live client work must all be checked for legal accuracy and amended to the point where it reaches the standard of a competent legal advisor. This specific model at the heart of the law clinic could be seen as a model which does not lend itself to ‘massification’ in the sense of integration throughout the whole degree. Experiential learning as a teaching method can inform the whole curriculum, and this is something that the Northumbria law school has sought to develop. Projects such as Streetlaw can contribute to a menu of experiences that bring students closer to what it is to be a lawyer. But casework involving live clients requires a high level of expertise and dedicated supervision that could become unmanageable if expanded too far. In any event, students need a mixed diet. Spjut could be seen as justified to some extent in critiquing wholesale ‘clinicalisation’ of the law degree, to the extent that the narrow range of cases likely to be encountered by students means that their learning needs to include ‘black letter law’ in some form, providing the foundations for their understanding of legal principles.

#### Chapter 4 – Pillar 4-The role of supervisor in the Student Law Office – being a clinical educator in a full casework model clinic

The fourth pillar of the temple is supervision. What are the challenges faced by law clinic supervisors, as clinical educators? They work in a complex environment when dealing with real casework. The commonalities with other professionals working as educators in fields of practice are clear. They are dealing with problems which can be “uncertain, ambiguous or



hidden".<sup>110</sup> Schön talked of professional practice as 'the swampy lowlands, where situations are confusing messes incapable of technical solution and usually involve problems of greatest human concern'.<sup>111</sup> Most law clinic supervisors would identify with this portrait of complexity.

As Higgs and McAllister acknowledge, clinical educators need to be skilled practitioners as well as effective teachers. Their work was within the context of health practitioners, but maps onto all practitioners working as educators, including law clinic supervisors who have to manage clinical programs to enable law students to understand what it is to be a lawyer in practice. Clinical educators supervising students in practice 'take ethical and moral responsibility for their students and for the clients assigned to them'<sup>112</sup> - a key requirement for those operating in a law clinic.

Posner talks of the boundary-spanning potential of the "pracademic" – those who occupy positions combining the role of both academic and practitioner, spanning both the professional and the academic area, whilst requiring 'sufficient legitimacy to be respected in both communities'.<sup>113</sup> I examine and record below some of the practical aspects of the role of clinical supervisor at Northumbria, before looking at the transition to becoming research active.

#### 4.1 Student Law Office - Clinical supervisors – the role, and as a group

Clinical supervisors at Northumbria have generally been on full academic contracts, with clinical teaching forming part of their overall teaching load.

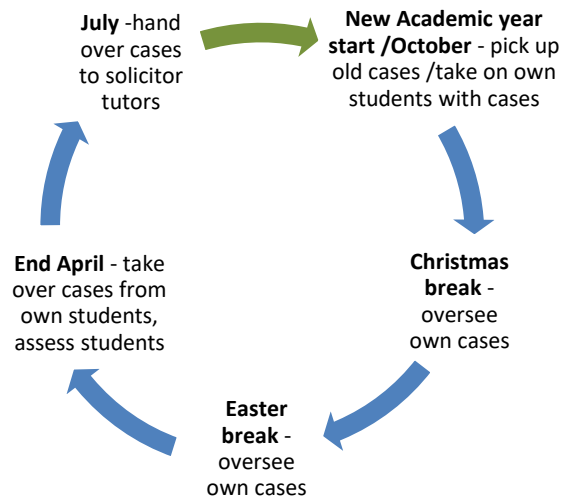
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<sup>110</sup> Joy Higgs and Lindy McAllister, "Being a Clinical Educator," *Advances in Health Sciences Education* 12, no. 2 (2007), <https://doi.org/10.1007/s10459-005-5491-2>.

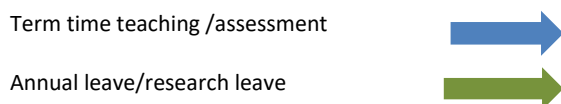
<sup>111</sup> Schön, "The Theory of Inquiry: Dewey's Legacy to Education."

<sup>112</sup> Higgs and McAllister, "Being a Clinical Educator."

<sup>113</sup> Posner, "The Pracademic: An Agenda for Re-Engaging Practitioners and Academics," 16.



**Figure 6: Year cycle for academic supervisors (Northumbria)**



Because the Student Law Office offers a full casework model, provision was made early on to provide support with ongoing casework during non-term time, through creation of the role of solicitor-tutor.

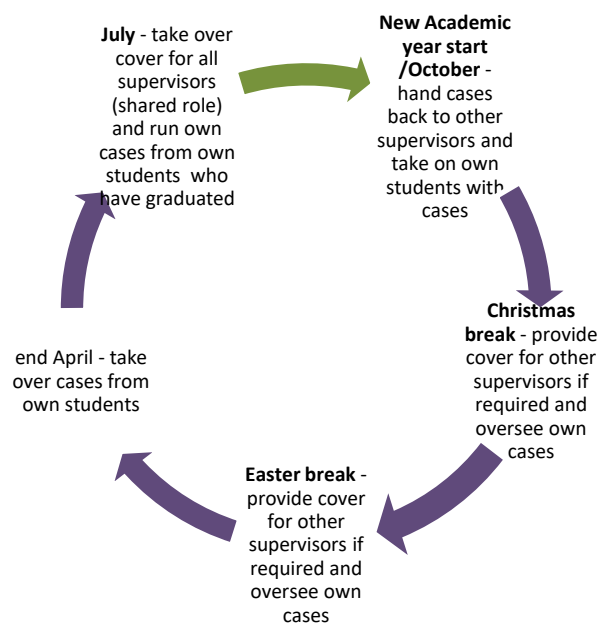
#### 4.2 Solicitor-tutors as a sub- group of supervisors –clinic teaching and practice responsibilities

One of the obvious challenges of the ‘in house’ full casework model is that the academic year does not match with the demands of casework, where cases continue through the vacation periods, indeed there can be as few as 24 weeks of teaching during the academic year, whereas clients’ cases continue throughout the year, spanning the summer and often carried on for a number of years. The law school had tried using locums, and the solicitor tutor role was the next step on. As with many American clinicians, who lack tenure and status within their teaching organisation, the solicitor tutor role was not initially one which provided an academic contract, but an administrative one, in spite of the level of responsibility in terms of conducting casework and providing active cover including advocacy, often on cases picked

up from academic supervisors at short notice. By the time I joined in 2001, the role was on the basis of an academic contract, the only limitation being that solicitor tutors might be required to provide cover during non-teaching time. From 2001 there were 2 solicitor tutors, by 2007 there were 3, and there are currently around 7.

The key difference between the role of solicitor tutor and that of academic staff with clinical teaching is;

- 1) The additional responsibilities towards the running of the law office as a practice, in terms of checking post, supporting the administrative staff in relation to queries on conduct of practice, inputting on office procedures.
- 2) Teaching is mainly (if not solely) in the clinic.
- 3) The more unrelenting nature of the casework, as illustrated below, such that there is responsibility for casework, (at the very least the solicitor tutors' own caseload), year-round only excepting specific holiday leave, during which time arrangements are made for another solicitor tutor (or supervisor within the same area of expertise) to oversee this.



**Figure 7 : Year cycle for solicitor tutors who are clinical supervisors (Northumbria)**

Term time teaching /assessment /office practice support  
Annual leave/research leave/office and casework cover



This constant tension between the clinic as being an academic course of study on the one hand and a functioning legal practice on the other creates a sense of discomfort but is also part of the unique character of this work, and what defines the community of practice that is clinical supervision.

But one only has to consider the implications of students in the law clinic spending 10-15 hours per week on their casework to see how the consequent workload for supervisors can become untenable. All research and advice (whether in the form of an interview plan or a letter) must be checked, as must all communications with third parties. Cases are driven by external factors and not by the rhythm of the academic year, so there is the lack of control over the timing of demands for supervision. Then there is the aspect of ongoing assessment, requiring not only correction and approval of client facing work, but feedback to students on the standard of their work within the framework of their degree studies.



### 4.3 Transition from external legal practice

For disciplines like nursing, law and architecture, the credibility of lecturers for students, professional governing bodies and employers has come from their being professional qualified and experienced rather than having a doctorate.<sup>114</sup>

Initially, like many of my colleagues, I joined the University as a qualified lawyer. I moved from high street practice, specifically to take up a role as a solicitor-tutor, at senior lecturer level, a post which combined those sharp end legal practical skills and expertise with a teaching role. For the first 5 years, I identified primarily as a lawyer, and it took some time to realise that I had moved closer to identifying myself as a teacher. This transition is explored by Chandler, who comments that 'developing a conscious theory of learning and an understanding of teaching methods can enable practitioner –supervisors to derive greater satisfaction from their work'.<sup>115</sup> I contributed to Chandler's paper as a participant, reflecting on the 'juggling' required in the different and sometimes conflicting needs of clients and students. However, the position of the legal practitioner coming into the university as a clinical supervisor can be much more complex. Not only is the practitioner moving into a role requiring a very unique form of teaching through live client work, requiring them to maintain some contact with their previous identity as a lawyer, but they are embarking on a transition to become an academic, a role which includes research and publication as well as teaching. Mytton touches on this latter role in her phenomenological examination of six law teachers, using the biographical method.<sup>116</sup> The three practitioners interviewed identify through their

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<sup>114</sup> Elaine Hall, "Grasping the nettle of 'doctorateness' for practitioner academics: a framework for thinking critically about curriculum design," *Studies in Continuing Education* 41, no. 2 (May 4 2019): 159, <https://doi.org/10.1080/0158037x.2018.1526781>, <Go to ISI>://WOS:000469132600003.

<sup>115</sup> S. Chandler, *Can litigators let go? The role of practitioner-supervisors in clinical legal education programmes* (2011), 90.

<sup>116</sup> Elizabeth Mytton, "Lived experiences of the law teacher," *The Law Teacher* 37, no. 1 (2003), <https://doi.org/10.1080/03069400.2003.9993119>.

professional backgrounds, not seeing role titles such as 'academic' as equating to their status as practitioners. She observed that practitioners expressed a 'shared understanding of values developed through working in practice, especially with regard to professional conduct and working in teams'.<sup>117</sup> This contrasted and at times came into conflict with the perceived reluctance of 'academics' to work in a team. In this sense, the clinical supervisors balanced this shared understanding of professional values, at the same time as endeavouring to fulfil their role as an academic. I spent 17 years in the university environment at Northumbria, first as one of only two members of staff with the title 'solicitor tutor' and finally as Director of a team of supervisors which included around 6 solicitor tutors plus around 12 'academics' who also supervised clinic students, and two staff on fixed term temporary contract. During this time, I witnessed enormous changes in terms of what was 'valued' by the university. Mytton, in her later work on prevailing issues in legal education sees the starting point to be that;

Legal scholarship within the context of the university is framed by measurement since only that which can be measured can be valued, according to Lyotard (1984). The underlying flaw which threatens the essence of the educational endeavour is that moral values and the moral good cannot be measured.<sup>118</sup>

Whilst finding much to agree with in this statement, I would add a caveat – there were ways in which the law clinic as an enterprise could appeal to other agendas within the University structure, and satisfy corporate aims, such as 'community engagement' as well as providing the 'moral good' that Mytton refers to, through engaging with social justice, and much of my role as Director was to ensure the clinic fulfilled this community role. But how far this assisted individual supervisors who taught within the clinic with their academic careers is more

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<sup>117</sup> Mytton, "Lived experiences of the law teacher," 45.

<sup>118</sup> Elizabeth Mytton and Chris Gale, "Prevailing issues in legal education within management and business environments," *International Journal of Law and Management* 54, no. 4 (2012): 314, <https://doi.org/10.1108/17542431211245341>.

difficult to quantify. Mytton is undoubtedly correct in identifying that 'legal scholarship' is valued by the metrics of publications suitable for the REF. In the end, the 'moral good' created by providing valuable legal advice to vulnerable, socially excluded clients and in turn inspiring students to see the way in which they could use their skills for social good, whilst teaching them an ethical legal framework for lawyering, would not, on its own, be enough; a measurable record of academic publications would be required. And for many of those who wish to rise within the University system, collegiality and co-operation can consequently give way to single minded individualism, secrecy and competitiveness – polar opposites of the collegiate environment within most law clinics, and particularly the community of practice I sought to create.

## Chapter 5 – Clinic supervision

### 5.1 Clinic Supervisors, Academics, Students and the community of practice.

*'I am wondering if the communities of practice for clinical practitioner academic is very different to practitioner-academic, or academic or indeed a lecturer –it is a community of practice on its own' (Dialogic interview 2)*

The themes within this dialogic interview pointed to the nature of clinical supervision and the concept of a community of practice. My own experience before joining the university was that of being connected to a community of practitioners, both within the firm where I worked as a lawyer, and a wider community, for example, of family lawyers, the area of law that I specialised in. I was at that time unaware of the work of Wenger and others on communities

of practice,<sup>119</sup> and landscapes of practice.<sup>120</sup> Wenger refers to ‘a responsible practitioner as someone whose experience in providing a service reflects the common competence of a community’.<sup>121</sup> The nature of that community of practice as a lawyer is relatively straightforward to identify. However, the university law school group of clinical supervisors, whilst in some ways homogenous, is in other ways diverse, as well as fluid. Each academic year, some members leave clinical teaching, to move out into purely academic teaching, or leave the law school. New members join, sometimes as new members of staff, sometimes as existing academics qualified to supervise in clinic.

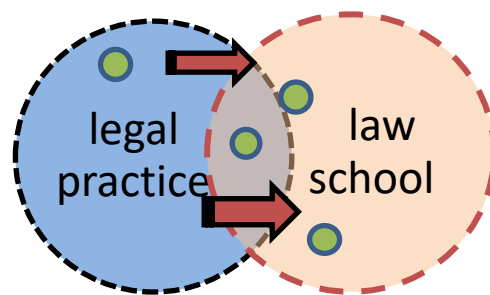


Figure 8: transition from practice to clinical teaching (overlap area)

Those entering the University and joining the law clinic traditionally come from practice-based backgrounds. They are qualified solicitors or barristers with practice skills, recruited wholly or partly because of these skills. At the time of my recruitment in 2000, there was no requirement for research experience. The value was placed on experience as a legal practitioner. So these individuals have already formed professional identities within a workplace and are likely to have enjoyed some level of mastery/competence in terms of their

<sup>119</sup> Etienne Wenger, *Communities of practice : learning, meaning, and identity* (Cambridge: Cambridge : Cambridge University Press, 1999).

<sup>120</sup> Etienne Wenger, *Learning in landscapes of practice : boundaries, identity, and knowledgeability in practice-based learning* (New York : Routledge, 2015).

<sup>121</sup> Wenger, *Learning in landscapes of practice : boundaries, identity, and knowledgeability in practice-based learning*, 14.

abilities within their roles at work. The move to a teaching role which includes clinical supervision within the law clinic has the potential to preserve some strands of that previous professional role; providing legal expertise to clients, and a linked sense of contributing to 'the greater good', or that sense of purpose which Wortham et al identify as one pillar of a tripartite formulation of motivation as described by Pink, the other two pillars being autonomy and mastery.<sup>122</sup> The demands of the clinic on supervisors are significant. In my published work, I have already taken this theme of the multiple demands on clinical supervisors further examining the role of clinical supervisors, and relate the value of this form of teaching to ideas of student wellbeing.<sup>123</sup> Both existing and new supervisors are required to take on a complex role;

#### **All supervisors**

In addition to preparing for and carrying out weekly face to face teaching meetings ('firm meetings'), supervisors are required to deal with;

- On-going stream of student work to be checked – decisions to be made in relation to urgent/nonurgent cases and client needs, including any limitation dates/other deadlines
- Mismatch of clinic work with academic year – ongoing responsibility for clients, resting ultimately with the supervisor regardless of whether it is in or out of term time – unless alternative arrangements for supervision are made.

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<sup>122</sup> Leah Wortham, Catherine Klein, and Beryl Blaustone, "Autonomy-Mastery-Purpose: Structuring Clinical Courses To Enhance These Critical Educational Goals," *International Journal of Clinical Legal Education* 18 (2014), <https://doi.org/10.19164/ijcle.v18i0.2>.

<sup>123</sup> Margaret Castles and Carol Boothby, "Which hat shall I wear today? Exploring the professional and ethical implications of law clinic supervision" in *Educating for Well-Being in Law and Practice*, ed. Caroline Strevens and Rachael Field (London: Routledge, 2020).

- Whereas previously, teaching staff at Northumbria University law school would not have specific requirements for research outputs, from around 2012 this became an organisational requirement.
- Opportunities for promotion within the university system which emphasise an individualistic rather than collegiate /team approach, and rely on research record.<sup>124</sup>

Those new to clinical teaching have additional challenges;

#### **New supervisors**

- Familiarisation with extensive office procedures and existing embedded approaches to practice in the law clinic, which may not align with previous experiences of practice.
- Lack of direct supervision/oversight of casework – for some lawyers, particularly those from a more corporate background, they may be used to a high level of overview and supervision themselves.
- Loss of previous community of practice and need to align with a new one based around a more multi-faceted role combining teaching, research and lawyering. The previous role in legal practice is likely to have centred on fee income generation (often with income targets) and a high level of individual expertise in the chosen areas of practice.

As Director, I provided a supporting role to all supervisors in their teaching role, as well as seeking to ensure compliance with professional practice and office management requirements.

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<sup>124</sup> Vicky Duckworth et al., "Creating feminized critical spaces and co-caring communities of practice outside patriarchal managerial landscapes," (Taylor & Francis, 2016).

## 5.2 Placing clinical teaching within a theoretical framework - What do we already know about clinical supervision?

Early published work on clinic, particularly from the States, focussed on clinic as a vehicle for social justice, and exposing students to those ideas through the mechanism of the clinic.<sup>125</sup> Teaching methods and best practice in terms of teaching and supervision of students has also been extensively explored, in the work of Stuckey, with specific aspects such as student feedback<sup>126</sup> and directive/non-directive supervision<sup>127</sup> also being explored. Research on the supervisors, their life as a supervisor, and their relationship with each other and the wider academic environment is much harder to find. Giddings explores many dimensions of the role, highlighting the complexity of the role, the lack of specific training for supervisors and the benefit of looking beyond legal practice.<sup>128</sup> Sage-Jacobson and Leiman use appreciative inquiry as a form of action research to evaluate the relationships between supervisors.<sup>129</sup> We get closer to the lived experience of a clinic supervisor in the work of Gregersen, who takes an auto-ethnographical approach to the lived experience of being a supervisor in the clinic at Northumbria.<sup>130</sup> How does my research differ from her detailed and thorough exploration of the life of a supervisor? If Gregersen's work is a micro –level examination of the lived experience of supervision, then as Director of the Law Clinic, mine would occupy an interstitial space between the micro and meso level. As a clinical supervisor, I was within the

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<sup>125</sup> Jane H. Aiken, "Provocateurs for justice.(Papers Presented at the Rutgers-Newark Law School Conference on "The Social Justice Mission of Clinical Education")," *Clinical Law Review* 7, no. 2 (2001).

<sup>126</sup> Beryl Blaustone, "Teaching law students to self-critique and to develop critical clinical self-awareness in performance.(Papers Presented at the UCLA/IALS Conference on "Enriching Clinical Education")," *Clinical Law Review* 13, no. 1 (2006).

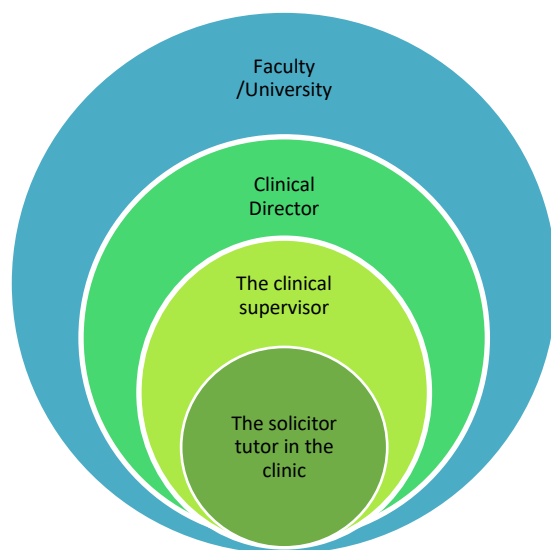
<sup>127</sup> Colleen F. Shanahan and Emily A. Benfer, "Adaptive clinical teaching," *Clinical Law Review* 19, no. 2 (2013).

<sup>128</sup> Jeff Giddings, "The Assumption of Responsibility: Supervision Practices in Experiential Legal Education," *SSRN Electronic Journal* (2014), <https://doi.org/10.2139/ssrn.2740208>.

<sup>129</sup> Sage-Jacobson and Leiman, "Identifying teaching and learning opportunities within professional relationships between clinic and supervisors.(Australia)."

<sup>130</sup> Gregersen, "The Lived Experience of a University Law Clinic Supervisor: An Autoethnographic Inquiry."

microsystem. Bronfenbrenner developed EST (ecological systems theory) to examine child development, and his concept of nested systems depicts four ecological systems nested within each other, representing social and cultural factors with which an individual will potentially interact.<sup>131</sup> This is used below as an analogy to illustrate the environment within which clinic supervisors have to operate and develop.



**Figure 9 : based on Bronfenbrenner's Ecological systems theory**

Undoubtedly, the position of academic staff within the university, and HE system satisfy many of the definitions of the EST (ecological systems construct). But Neal and Neal<sup>132</sup> provide a detailed critique of the potential limitations of EST, and suggest a drawing on Simmel's theory of intersecting social circles, which allow for the influence of social interactions, and enable the representation of more complex overlaps.<sup>133</sup> They used Simmel's concept of intersecting social circles that integrates Bronfenbrenner's work to develop a networked model presenting as overlapping structures.<sup>134</sup> This work recognised two things- complexity in social

<sup>131</sup> Urie Bronfenbrenner, *The ecology of human development : experiments by nature and design* (Cambridge, MA: Cambridge, MA : Harvard University Press, 1996).

<sup>132</sup> J. W. Neal and Z. P. Neal, "Nested or Networked? Future Directions for Ecological Systems Theory," *Social Development* 22, no. 4 (2013), <https://doi.org/10.1111/sode.12018>.

<sup>133</sup> Georg Simmel, "Conflict and The Web of Group Affiliations. New York: Free Press," (1955).

<sup>134</sup> Neal and Neal, "Nested or Networked? Future Directions for Ecological Systems Theory."



interaction, and the dynamic nature of these interactions, both of which are relevant to my exploration, which looks at role transition.

However in seeking to understand why participating in, as well as overseeing and managing the supervision of the law clinic was such a challenging role, I draw on the theory of communities of practice as a conceptual framework, indeed I returned to this theory of communities of practice as the richest description of the different ‘tribes’ within the law school and the clinic, but see the visual representation through EST, as modified by Neal and Neal, as providing a useful additional tool in examining the inter-relations of the groups, enabling more of an overview of the world – in this case, of where clinical supervision fits within the world of academia. Essentially, this analysis illustrated for me that clinical supervision involves identity, knowledge and expertise. In that sense, Wenger’s theory of community of practice with its recognition of cultural, societal and regulatory influences, it’s ecology of a domain of knowledge and development of a shared identity, provided the most appropriate framework. Where the other two frameworks depicted social engagement and interaction, only Wenger’s theory focussed on a shared engagement in practice-based development, which was at the heart of the clinical teaching team.

In the table below, Neal and Neal’s work on Bronfenbrenner and Simmel is summarised, and I have added my own analysis from Wenger’s theory of communities of practice by way of comparison. I then examine why Wenger’s theory community of practice is the ‘best fit’ as a tool for the examination of the role of clinical supervisor.

### Three Theoretical frameworks compared

Construct	Nested - Bronfenbrenner	Networked- Simmel	Community of Practice Domain -Wenger
Ecological environment	A nested arrangement of structures each contained within the next	An overlapping arrangement of structures each directly or indirectly connected to others by the direct or indirect social interactions of their participants	Development of a shared identity around a collective intention to steward a domain of knowledge and to sustain learning about it
Setting	A place where people can readily engage in face to face interaction	A set of people engaged in social interaction – that include the focal individual	An ethos of learning and practice-based development of knowledge through an active engagement in practice
Microsystem	A pattern of activities ,roles and interpersonal relations experienced by the developing person in a given setting with particular physical and material characteristics	... A setting—that is, a set of people engaged in social interaction—that includes the focal individual.	‘Groups of people who share a concern, a set of problems, or a passion about a topic, and who deepen their knowledge and expertise in the area by interacting on an ongoing basis’ (p. 4 Wenger et al 2002
Mesosystem	The interrelations among two or more settings in which the developing person actively participates	... A social interaction between participants in different settings that both include the focal individual.	The interaction and mediation between the community of practice and the environment in which it operates
Ecosystem	One or more settings that do not involve the developing person as an active participant, but in which events occur that effect, or are affected by, what happens in the setting containing the developing person	... A setting—that is, a set of people engaged in social interaction—that does not include, but whose participants interact directly or indirectly with, the focal individual.	One or more settings which can impact on the operation of the community of practice either directly or indirectly
Macrosystem	Consistencies, in the form and context of lower order systems that exist, or could exist, at the level of subculture or culture as a whole, along with any belief systems or ideology underlying such concepts (p26)	... The social patterns that govern the formation and dissolution of social interactions between individuals (e.g., homophily, transitivity, and so on), and thus the relationships among ecological systems.	Cultural, societal and regulatory influences which may impact on the community of practice.
Chronosystem	‘... the influence on the person's development of changes (and continuities) over time in the environments in which the person is living.’ (Bronfenbrenner, 1986b, p. 724)	... The observation that patterns of social interactions between individuals change over time, and that such changes impact the focal individual, both directly and by altering the configuration of ecological systems around him/her.	Community development is fluid , members join/leave at different times (Wenger 1998) Members move from apprentice to master

Figure 10 : based on Neal and Neal’s work on Bronfenbrenner and Simmel, with addition of Wenger’s theory.

### 5.3 Communities of Practice – the acquisition of identity and knowledge at work.

Wenger describes “a landscape of practice” which “provides a broad social perspective on professional learning”.<sup>135</sup> A community of practice “recognises the symbiotic relationship of theory and practice”.<sup>136</sup> This conceptualisation of clinic could form a counter to Spjut’s early criticism of integration of clinic throughout the curriculum.

The ‘community of practice’ literature is based on the theory of situated learning where context is vital for learning and practice. Situated learning in turn is based on the earlier work of Vygotsky, and his theory of learning which was itself based on the idea that a learners cognitive development is reliant on social interaction with ‘more capable peers’, ‘people who are more skilled in the intellectual technologies of a culture’.<sup>137</sup> In the same way that we, as supervisors, could teach and provide modelling for students, we also provide a context within which clinic supervisors learn the ‘practice’ of clinical supervision from more experienced peers.

Lave and Wenger’s work with apprentices explored the creation of identity, starting as a novice at the periphery of the community and moving to the core as they observe others, and participate in the activities- as is the case with new supervisors in the clinical teaching environment. In their earlier work, Wenger et al described the three key elements as joint enterprise, mutuality and shared repertoire, but these were later redefined as domain, community and practice. In a fascinating interview with Etienne Wenger, Farnsworth and

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<sup>135</sup> Wenger, *Communities of practice : learning, meaning, and identity*.

<sup>136</sup> Nicola Andrew, Debbie Tolson, and Dorothy Ferguson, "Building on Wenger: Communities of practice in nursing," *Nurse Education Today* 28, no. 2 (2008): 15, <https://doi.org/10.1016/j.nedt.2007.05.002>.

<sup>137</sup> L. S. Vygotskii, *Mind in society : the development of higher psychological processes*, ed. Michael Cole (Cambridge, Mass. London: Harvard University Press, 1978).

Kleanthous dig deeper to explore what is, and isn't, a community of practice.<sup>138</sup> So although Wenger asserts that communities of practice can be present in any area of human activity, it is not 'a group of people per se' rather 'a social process of negotiating competence in a domain over time'. It is not just a team (team is defined by a joint task). A community of practice is a 'learning partnership related to a domain of practice'.<sup>139</sup>

In this respect, the community of practice is not just a network although it will include a network aspect, i.e. connections. The network is just one aspect – but not all networks involve identification with 'mutually negotiated competence around a domain of practice'. According to Seely, communities of practice will be 'dynamic and cumulative'.<sup>140</sup> Teece sees them as 'intrinsically social and collective' phenomena<sup>141</sup> and for this reason, the communities of practice concepts, together with Vygotsky's work, match the experience of clinical supervisors teaching within a University law clinic more closely than, for example, Bronfenbrenner's 'nested structures' representation, or indeed, Simmel's network theory.

Members of such groups collectively develop an outlook on work and the world that *may* reflect the organization as a whole, but will most intensely reflect the local community.

This collective outlook could be defined as one of many 'epistemic cultures' as characterised by Knorr Cetina –how knowledge flows across such communities that 'create and warrant

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<sup>138</sup> Valerie Farnsworth, Irene Kleanthous, and Etienne Wenger-Trayner, "Communities of Practice as a Social Theory of Learning: a Conversation with Etienne Wenger," *British Journal of Educational Studies* 64, no. 2 (2016), <https://doi.org/10.1080/00071005.2015.1133799>.

<sup>139</sup> Farnsworth, Kleanthous, and Wenger-Trayner, "Communities of Practice as a Social Theory of Learning: a Conversation with Etienne Wenger," 7.

<sup>140</sup> Brown John Seely and Duguid Paul, "Knowledge and Organization: A Social-Practice Perspective," *Organization Science* 12, no. 2 (2001): 202, <https://doi.org/10.1287/orsc.12.2.198.10116>.

<sup>141</sup> DAVID TEECE and GARY PISANO, "The Dynamic Capabilities of Firms: an Introduction," *Industrial and Corporate Change* 3, no. 3 (1994): 521, <https://doi.org/10.1093/icc/3.3.537-a>, <https://doi.org/10.1093/icc/3.3.537-a>.

knowledge'.<sup>142</sup> In the law clinic at Northumbria, new supervisors normally arrived with significant existing knowledge and expertise from their experience in legal practice, but the knowledge that flowed across the community of practice can be characterised as encompassing not just subject knowledge or legal practice knowledge, but the knowledge of teaching of law through experiential methods, and later, the scholarship associated with this type of teaching and learning – a very specific form of 'praxis'.

As Director, my role was to support those joining the supervisory team, who typically had excellent practice skills, and legal knowledge within their areas of expertise, but little experience of teaching and assessing students. They may have had experience of supervising trainee solicitors, a role with some similarities but many differences. Law students are balancing clinic casework with their other studies and are likely to require far more support than a trainee. It was important for clinic supervisors to pitch clinic work at an appropriate level and to match the students level of ability to the casework . I explore below some of the complexities of supervision in clinic.

## Chapter 6 – the nature of clinical supervision in this community of practice – risk and uncertainty

### 6.1 Supervisors, certainty and uncertainty

Existing work on the experiences of new clinical supervisors about the importance of 'letting go' and allowing students the space to make their own decisions suggests that for some practitioners, there is a practical difficulty in finding the balance necessary for the student to

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<sup>142</sup> K. Knorr Cetina, "How the Sciences Make Knowledge" (Harvard University Press., Cambridge, MA 1999).

learn from their experience without putting the client at risk.<sup>143</sup> It is an interpersonal relationship, being to a great extent, what Kreber calls 'communicative learning'<sup>144</sup> or 'praxis' and that 'the cognitive power needed for praxis is practical judgment'.<sup>145</sup> Clinic requires student engagement far beyond that demanded in the methods of simulated learning adopted in other arenas. Whilst the use of methods such as problem-based learning and the standardised client are useful in orienting students to the complexity of real-life legal problems, and interaction with clients, a live client clinic is a quantum leap for many students, because clinical experiences are never certain.

This uncertainty is not the sole preserve of the student. The supervisor, from a wealth of previous experience, may be able to predict what, given the circumstances, might happen as a case progresses, but equally, in many cases, the exact twists and turns that a case may take are unpredictable. Shanahan and Benfer discuss the challenges that face a clinician working with diverse students, clients and legal issues and the imperative for adaption in action on the part of supervisors.<sup>146</sup> Whilst they focus on the development of a structured process for clinical supervisors in effective adaptive teaching, it serves as an important reminder that clinical supervisors work in an environment where they too do not always know what to do next and are as a consequence in an ideal position to model learning and reflection in action to students.

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<sup>143</sup> Chandler, *Can litigators let go? The role of practitioner-supervisors in clinical legal education programmes*.

<sup>144</sup> Carolin Kreber, "Authenticity in and through teaching in higher education; the transformative potential of the scholarship of teaching," *Teaching & Learning Inquiry* 1, no. 1 (2013 2013), <https://doi.org/https://doi.org/10.20343/teachlearningu.1.1.5>.

<sup>145</sup> Kreber, "Authenticity in and through teaching in higher education; the transformative potential of the scholarship of teaching," 118.

<sup>146</sup> Shanahan and Benfer, "Adaptive clinical teaching," 316.

The imperative of 'non direction' that underlined early thinking about clinical supervision has overlooked the other powerful teaching methods that a clinical supervisor brings to the clinic environment. Katz challenges the traditional role of the clinical supervisor who reviews student preparation and performance, offers feedback and dialogue about decision, without revealing their own points of view, on the basis that more assertive direction would diminish the opportunities for students learning.<sup>147</sup> The idea that clinical supervisors are 'mirrors' reflecting back upon students in a way that assists them in their journey does not acknowledge the capacity as supervisors to engage in the student learning process in as active and dynamic participants in the professional legal environment- one of uncertain outcomes. Clinical supervisors have the opportunity to model this community of practice in a reflexive way to students, through their interactions with students, but also with their clinical colleagues, and by allowing their students to be exposed to this network of support and knowledge, can demonstrate an important aspect of professional life and learning.

## 6.2 Why is the work so intensive?

More recently, pro bono law clinics in one form or another have become a key attraction forming part of the 'offer' to students for many universities. Inevitably, this has led to an examination of the tension between providing this invaluable experience to students, and the high workload created by the clinical supervisory role.

According to Sylvester, the legal clinic's context is unique in that it;

uses a real client/real emotions, has an unknown dynamic/ changing and evolving factual perspectives, has an unknown outcome/uncertain content and is delivered through a distinctive working relationship with a supervisor.<sup>148</sup>

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<sup>147</sup> Harriet N. Katz, "Reconsidering collaboration and modeling: enriching clinical pedagogy," *Gonzaga Law Review* 41, no. 2 (2006).

<sup>148</sup> Cath Sylvester, "Through a glass darkly: Assessment of a real client, compulsory clinic in an undergraduate law programme," *International Journal of Clinical Legal Education* 23, no. 1 (2016), <https://doi.org/10.19164/ijcle.v23i1.489>.

She encapsulates the authenticity of the experience, the uncertainty, as well as the unboundedness of it and the human interaction which enriches it. No surprise then that clinic takes time. In terms of the authenticity of the experience, there is a fundamental difference between simulated work, where students can produce pieces that can be graded, and feedback provided, but they are not sent out into the real world to the client or others, and live client work, which must reach a professional standard. The dilemma for supervisors is that if students are unable to bring it up to that professional level, even with intensive feedback and amendment, at some point the supervisor must intervene and 'make good' the work. This reflective, iterative process is far more time consuming than the supervisor simply producing the piece of work themselves in the first instance. In a full representation live client clinic the demands of providing legal advice and undertaking representation alternate with the need to pass ownership of the cases over to the students whilst 'scaffolding' their learning experience. Students move towards greater autonomy – but this is not necessarily an incremental progression, as it can vary depending on the complexity of the case and the ability of the student, echoing Vygotsky's recognition of the role of the teacher or more able peer as enablers for learning, as well as the concept of relative achievement through the zone of proximal development. However, with clinic, there must be a final perfected product in terms of legal service for the client, whether provided by the student or the supervisor. There can be excellent opportunities for modelling legal practice to students, but this final step, whilst enhancing the student learning experience if handled well, adds to the overall demands of the supervisory role.



Although there can be some level of repetition and uniformity in terms of the research produced, for example, with students researching the same legal area, generally speaking, each piece of work produced by the students is unique, and it is easy to underestimate how time consuming checking the work generated by clinic students can be. Common issues include;

- Where there is **not the correct interpretation/emphasis on the facts** provided by the client.
- Where the facts are correct and there is a general collation of correctly researched information, but the **conclusions** drawn are not accurate.

Some of these permutations are illustrated below.

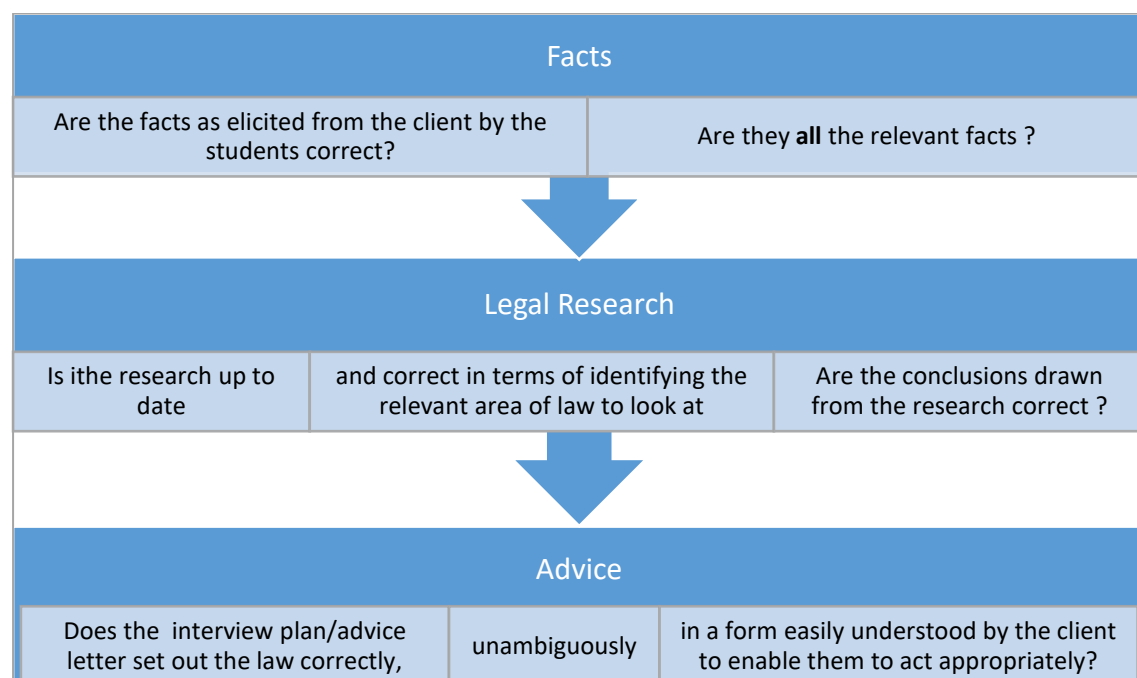


Figure 11 : Process of checking student work in clinic

The time required to check and amend students written work is greatly increased where the area being researched is not one the supervisor is very familiar with, or has not come across for some time, so their own knowledge risks being out of date. In this sense, there can be a dichotomy in terms of whether students can provide a 'real' resource in an external marketplace to legal advisers in terms of the legal work they can carry out, or whether in fact much of the intrinsic value is in the input of the qualified supervisor. This can mean that, in seeking out partnerships with external organisations such as community groups or local legal practices, there can be a mismatch of needs. In many cases, external organisations are simply seeking to expand their own capacity. Whilst at first glance, it might appear that law students can provide additional capacity; the reality is that students cannot provide legal advice without appropriate qualified legal supervision, and this supervision is a valuable resource. Students are often good at locating research on a closely defined topic or question, but lack the breadth of knowledge or experience to then contextualise this information and apply it to untidy real-life situations, without support. As a result, the nexus between university law clinics and external organisations such as CAB and law centres generally involves some form of mutual benefit – and this can in many cases include, for example, provision of funding from the university to the external organisation to provide training and supervision to students such as provision of office facilities, or access to a qualified supervisor from the law clinic, underlining the fact that the really valuable resource is the training, knowledge and experience held in the role of the supervisor.

In an assessed clinic, the supervisor is also continually assessing the work produced, and providing some level of feedback to the student – not simply the legal accuracy of the work produced, but also on the students' progress in terms of ultimate grading within the framework of the university assessment system.

Nicholson and Pakgohar use the concept (drawn from organisational theory) of 'lean management' to posit one way of 'up scaling' the clinic experience.<sup>149</sup> Sheffield Hallam law school has offered an in-house clinic experience for over 25 years. As the authors explain, in recent years, the experience has been optional, as 20 credit capstone module, with 40 places available but the plan is to increase this to 750-900 students participating in clinic. The authors recognise that 'the reported experience of teaching staff within the Clinic is that they spend vastly more working hours supervising students in this context, than the university is able to award them as part of its academic work planning process'.<sup>150</sup>

Lean management theory is used to produce a proposal that, by separating out the activities/processes in the casework in order to distinguish between those which create value (or are essential) and those which are 'muda' ('wasteful'). Their University has set up an Alternative Business Structure (ABS),<sup>151</sup> and in effect, it appears that the client's enquiry will go to one of the (two) solicitors conducting the cases who will prepare a 'sub task memo' which will then go to the students to work on with the support of supervising academics and an 'expertise bank' - a pool of academic and/or practitioner 'experts' that the academic supervisor can draw on for advice, either in relation to the relevant law or in relation to more practice-based skills such as drafting.

In a jointly authored paper, I have already set out some of our concerns on the move by some University law clinics to become Alternative Business Structures, including increased pressure to take on more cases, and a corresponding loss of pedagogical benefits of clinic. In that piece,

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<sup>149</sup> Alex Nicholson and Alireza Pakgohar, "Lean Thinking in a UK University Law Clinic: A Reflective Case Study," 2019 27, no. 1 (2019-12-20 2019), <https://doi.org/10.19164/ijcle.v27i1.816>, <https://www.northumbriajournals.co.uk/index.php/ijcle/article/view/816>.

<sup>150</sup> Nicholson and Pakgohar, "Lean Thinking in a UK University Law Clinic: A Reflective Case Study."

<sup>151</sup> <https://www.lawgazette.co.uk/university-claims-legal-first-with-student-law-firm/5069331.article>

I identify the transformative value of clinic, that the benefits of clinic lie to a great extent in the relationship between student and supervisor and that;

Clinical legal education allows us, as teachers, to work with students in a holistic, inclusive and continuous manner. We have the pleasure of seeing students grow as critical thinkers, independent and autonomous workers, and good time managers. They develop their legal skills, but there is also a personal journey. Clinic provides students with room to grow and evolve as lawyers and people.<sup>152</sup>

New ways of looking at the structure of clinic are needed, and the use of management theories provides a framework for examining alternatives. The motivation is clearly the expansion of the clinical offering, and there is a recognition of the highly work - intensive nature of live casework supervision. Nicholson and Pakgohar appear to use the terms 'consumer', and 'customer' interchangeably as terms for student, although of course there is another consumer in the relationship; the client. There is a recognition of the potential for delay for clients when students deal with cases, clinical work being to some extent 'law in slow motion'. This is something which clinical supervisors will recognise, and the time it takes to co-produce legal research leading to client advice can be problematic, and without doubt influences the selection of cases by the supervisor. In urgent cases, or those with short deadlines, the supervisor has to be prepared to step in and provide the advice themselves, in the (likely) event that students cannot provide the work in time.

But is there a risk of 'dumbing down' the student experience in this lean management system? The students in this new process do not appear to have contact with the client but appear to work more 'behind the scenes' producing research. 'Discrete tasks' are delegated to the students, with support from academics. But it is hard to see exactly how this would save much time- the students must still research the area of law and draft some form of research report.

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<sup>152</sup> Elaine Campbell and Carol Boothby, "University law clinics as alternative business structures: more questions than answers?," (Taylor & Francis, 2016).

The various reports generated would then need to be sewn back together into an interview plan or letter of advice – unless of course they are not actually used, and the solicitor simply prepares their own advice, with the students carrying out work which does not contribute in a concrete way to the advice provided. Whilst it is not entirely clear what the process is, concerns might be;

- lack of authenticity of experience for students
- lack of student contact with client
- reduced contact between students and supervisors
- the loss of a sense of a 'shared journey ' that students and supervisors experience when both work on a client case

In relation to the first two points, the authenticity of the experience has been a fundamental keystone of the experience at Northumbria Student Law Office. Whilst simulation can form a very useful part of the experiential teaching armoury, any clinician knows the difference in student motivation and engagement when the work involves direct contact with a live client.

The author argues that;

Not only do clients stand to benefit from faster turnaround times, but student time would be spent exclusively on activities designed to meet their pedagogical need and therefore greater value would arguably be delivered.<sup>153</sup>

Whilst the first point may well be true, the second seems a moot point; one of the threads which emerged in my dialogic interviews was the value of the time supervisors and students spent together - often the unstructured, unplanned meetings. As commented during one dialogic interview;

For me, when I was sat doing timetabling stuff, having the students come to say, we have got this what should we do about this, and I would say 'yes, what should we do about it?', this was a really refreshing part of my teaching. (Dialogic Interview 2)

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<sup>153</sup> Nicholson and Pakgohar, "Lean Thinking in a UK University Law Clinic: A Reflective Case Study."

Similarly, some of the student comments on the interaction with supervisors (within the semi structured interviews relating to a joint publication on employability<sup>154</sup> and also research interviews carried out on the experience of assessment in clinic) provided similarly positive views on the relationship; Students recognise that the support they could expect as an employee in a law firm is very different to that provided to them whilst participating in the law clinic;

That's what I think, like, when you practice, obviously, at the end of the day I'm not under any illusions, they run the business and I am just an employee – yes it's great if you're valued and I understand that, but they're focusing on their clients and what's making money for their business, whereas (X supervisor) - and (Y supervisor) especially – were focusing on how it was for me, how it was developing me personally.....

But that student goes on to reflect on that day-to day interaction facilitated by the law clinic;

I felt like, honestly, like I got on really well with (Y supervisor) and he really does care about us.....I know he's busy but he was never too busy to sit down and have a chat or walk into the office at 9am and sneakily offer me a coffee that I wasn't allowed!

And finally, how that engagement, often through spending time in discussion, reflection and providing feedback, can provide that transformation;

But he cares and it's that sense of security and support that – yes, other teachers have given me that in other modules but not to the extent - and I think I am confident but not as confident, like, beginning the SLO, I...never believed in what I could do.....but I think (X and Y supervisors), in whatever way they did it, they brought that out in me, they made me want to do the law because they supported me personally; it was about me, it was about how I was doing and yes, there were things I was doing wrong but it was explained why.

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<sup>154</sup> Carol Boothby Jill Alexander, " Stakeholder perceptions of Clinical Legal Education within an employability context," 25, no. 3 (2018), <https://doi.org/doi:http://dx.doi.org/10.19164/ijcle.v25i3.768>

This type of comment, of the transformative effect of clinic on students, and the key role of the supervisor in that personal development, was not unusual; clinic students completed clinic end of year questionnaires and, more importantly for the University, the National Students Survey, with exuberant praise of the clinic experience. If one thing shone through in student feedback, it was the value students placed on the personal relationships they were able to form within clinic; with the client, with brilliant clinic administrative staff, with the other students they worked with, but most significantly, with their supervisors.

So in addition to being fully competent within their area of law, up to date with professional conduct and practice issues, the clinical supervisor must provide detailed feedback to students, not just on the accuracy of the law the student refers to, but in terms of their legal writing, and their overall performance in terms of academic grading. This grading matters a great deal to students; as stated above, it forms a significant percentage of their final year mark and can impact on their final degree classification. A system of grade descriptors is used which required some detail from the supervisors on why that descriptor was selected.<sup>155</sup> This transparency means of course that this can be challenged by students. It (quite rightly) requires some thought and reflection on the part of the supervisor to ensure that feedback given more informally during the year is consistent with the final descriptors and marks selected- requiring, some would say, a counsel of perfection.

### **Implications of a casework- based clinic**

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<sup>155</sup> Carol Boothby, "'Pigs are not fattened by being weighed' – so why assess clinic- and can we defend our methods?," *International Journal of Clinical Legal Education* 23, no. 1 (2016), <https://doi.org/10.19164/ijcle.v23i1.493>. The number of descriptors has been reduced more recently.

*Clinic is more 'self-contained' – they learn to cut off – they can't leave clinic til it's done.*

*If you are running cases that's much more stressful (Interview 1)*

This theme arose from the contrast between the two clinical offerings, the Northumbria model of a full casework model where cases are on-going to some extent year-round, and the other University law clinic's 'advice only' system, where advice is provided but there is no on-going retainer for legal services. The additional burden and risk posed by offering a full casework model, where the clinic takes on clients under a retainer, came to the fore:

You know, there's that huge emotional burden in taking on people's problems, how do you cope with that? And actually, by having – shutting and locking the doors in clinic helps with that, I've done it about an hour, this is where we've got to, it's in the cabinet, lock it away, move on to the next one  
( Dialogic Interview 1)

For supervisors, this creates an on-going responsibility, to clients, and to engage with students as they work through their preparation for research and advice. It also creates a dynamic situation, where at any point, the client situation could change, and further advice be required.

Similarly, for the Director of the clinic, there is an unbounded possibility for professional conduct issues to arise which require consideration.

### 6.3 Workload issues arising from the nature of live client work

In the enthusiasm to build the provision of clinical education, and to convince those who provide the resources- vice chancellors, deans - of its value, including the contribution to student employability, the workload implications have not always been fully accounted for. Those blazing a trail for greater experiential learning in authentic learning environments have focussed on the benefits, such as greater employability, engagement of students, social justice benefits for the community. For universities, the clinic work can support the university



mission statement in relation to links to industry, employability and community engagement. Law clinic supporters have been passionate in their advocacy for this form of learning- often trumpeting the contribution to social justice. There is a wealth of published pedagogical research supporting clinic as a teaching method, although one wonders how many of those advocates remained actively involved in the challenge of hands-on casework supervision. But more recently, the workload issues around this type of teaching have started to emerge, in some cases as a result of the push from universities to roll out these valuable opportunities to a wider range of students. Linked to the drive for performativity, and 'outputs', and the increasing tension between teaching and research demands, Northumbria law school was amongst the first in the University to develop a detailed workload allocation system. However, as Ball argues, workload allocation models can be a 'fabrication' and 'fabrications conceal as much as they reveal'.<sup>156</sup> The risk particularly for lawyers is that workload time allocation begins to resemble the system of time recording and billable hours widely adopted in legal practice, which for many was a motive for moving from practice to academia.

Most of the exploration of academic workload for practice-based study has come out of the work on WIL (work integrated learning) by Australian academics. A scoping study at QUT saw WIL as encompassing 'a range of approaches and strategies that integrate theory with the practice of work within a purposefully designed curriculum'.<sup>157</sup> Studies of WIL found practicum (defined as 'a practical section of a course of study') essential and central to the university's role in providing society with well prepared, work ready graduates, yet concludes it does not enjoy that kind of status at home in the university.

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<sup>156</sup> Stephen J. Ball, "The teacher's soul and the terrors of performativity," *Journal of Education Policy* 18, no. 2 (2003), <https://doi.org/10.1080/0268093022000043065>.

<sup>157</sup> Carol-joy Patrick et al., *The WIL (Work Integrated Learning) report: A national scoping study* (Queensland University of Technology, 2008).

In fact, I would argue that, in the intervening period from the publication of this study in 1999, as a result of the employability agenda, practice-based learning such as the law clinic has become more highly valued at Northumbria University, although not without tireless effort on the part of the clinic itself to demonstrate its worth. How did this manifest itself? As the clinic Director, I and my predecessors sought to reach out and make links with other faculties and find common ground to work together on projects, with varying levels of success. However, the most effective way of raising the clinic's profile, both in the University and in the wider community was through seeking external validation through competing for awards, both local and national, with a very high level of success. I came to see these awards as affording a level of protection for the clinic against any future attempts to water down the experience. Cooper and Orrell take the view that 'Like much domestic work in the home, the practicum fails to be publicly acknowledged for its contribution!' <sup>158</sup>

Due to the law clinic's success in gaining externally recognition through national and international awards, as well as the positive student feedback, this was not entirely the case, but it remains true that, like much domestic work in the home, the enormous amount of time and effort that the clinic requires, day in, day out, regardless of the fluctuations of the academic year, goes unrecognised.

Virtually all of the research in this area of work integrated learning relates to externships and work placements where the day-to day supervision is provided by external supervisors in the workplace, and in turn, the focus often is on the challenges of assessment of these students. McNamara acknowledges the clinic model of students under supervision as 'resource

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<sup>158</sup> Lesley Cooper and Janice Orrell, "The practicum: The domestic work of university teaching," *HERDSA News* 21, no. 2 (1999).

intensive and generally only available to limited numbers of students' and posits that it is not necessary for academics to control or participate actively in the work experience. In the Northumbria model of law clinic, significant numbers of students participate, and both student and supervisor are fully involved and heavily invested in the work of the law clinic. However, elsewhere she also acknowledges the critical importance of the final year as a 'capstone'; 'Thoughtfully designed, capstones can promote holistic thinking, self-confidence and self-efficacy, better equipping students with the skills to deal with the challenge and change of the workplace'. The important role of reflection is emphasised; 'Incorporation of reflective practice and promotion of resilience should be key elements in the design of effective capstone experiences'.<sup>159</sup>

If clinic is to provide this type of valuable capstone experience, the role of supervisor is a complex one if they are to not only deliver these outcomes for students but ensure suitable competent legal service for clients, as well as fulfilling all the other demands of the academic role. The paper merits further reading, from the perspective that all that is held up as constituting an excellent capstone experience is provided within the Student Law Office final year module – in past years to the 4<sup>th</sup> year students on the 'exempting' degree course, but in the future to the 3<sup>rd</sup> year students, with the changes to the Legal Practice Course, and it's imminent mutation into the Solicitors Qualifying Examination. The value of the clinic work to employability was critically considered in my jointly authored publication, exploring the ways in which experience in clinic should 'provide students with a convincing narrative with examples of experience linked to the real world of legal work'.<sup>160</sup>

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<sup>159</sup> McNamara et al., "Capstones as transitional experiences," 12.

<sup>160</sup> Jill Alexander, " Stakeholder perceptions of Clinical Legal Education within an employability context."

So there seems to be consensus; practical experience through participation in a law clinic is valuable to students. There may be debates around the *extent* to which the experience benefits students<sup>161</sup> but generally, some element of practical experience is perceived as a positive if not essential component of study for law students.

However, as outlined above, this type of practice-based study, whilst a rich and valuable learning environment for students, can have a number of implications for academic staff, resulting in unpredictable workloads, as well as very high levels of professional responsibility and consequent risk, both personal (for the individual academic) and institutional, should matters go seriously wrong.

How do academics cope and adapt to such pressures generally? The work of earlier Directors and leaders in clinic at Northumbria had laid the groundwork for the success of the clinic and established a national and international reputation as one of the largest full representation, live client,' in-house' assessed clinics in the world. However there did emerge a tension between the clinic - with its commitment to client service, and to the students through the rich experiences they benefitted from in the clinic - and the wider university, particularly as the university agenda became driven by an ambition to climb the league tables by improving its research outputs. As Director, I was overseeing a transition in terms of identity, with many clinical supervisors shifting their focus from clients and students to incorporate research. But with a limited pool of available time, there was a risk of spreading ourselves too thinly, and compromising our professional standards, our obligations to clients, or the student experience. Much of my time as Director was taken up in supporting supervisors, arguing for

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<sup>161</sup> Francis, "Legal Education, Social Mobility, and Employability: Possible Selves, Curriculum Intervention, and the Role of Legal Work Experience."

more time to be allocated for clinical teaching, and looking for ways to make the clinical teaching more efficient and manageable. This forced me to look at what could be 'let go'. Professional obligations and standards could not be compromised as these were imposed externally by professional bodies such as the Law Society and Solicitors Regulation Authority. I significantly reduced the weekly clinical lecture program, as this impacted on staff time but was also unpopular with students who struggled to engage with this, particularly in comparison to their enthusiasm for their live client activities. I held clinic review days where we examined our experiences and discussed ways of building in greater efficiency. Careful case selection was one topic much discussed. Focussing on offering an 'advice-only' service to clients gave the supervisor greater control over the scope of work and limited ongoing involvement. But this could impact on the experience of the students, who would get the opportunity to see the initial issues in a case, and seek to offer advice, but would not see how the case unfolded, with all the unexpected twists and turns that occur with the interaction with third parties, including the court. A balance needed to be struck.

I reviewed how we assessed students in clinic – and in particular our extremely thorough and time-consuming post-marking moderation process. I reduced the amount of student portfolios which were moderated. However, it was not until I was challenged to defend our assessment methods that I came to see the value of a wider knowledge of teaching and learning research. It was only then that I was motivated to engage and apply this wider knowledge, drawing on existing research on teaching and assessment across the professions.

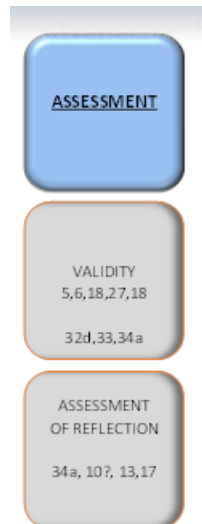
#### 6.4 Pillar 5- Validity of Assessment in clinic - how I came to see research informed teaching and learning as having a practical value as 'a shield and a sword'

'If we wish to discover the truth about an educational system, we must first look to its assessment procedures'.<sup>162</sup>

I return also to Lyotard<sup>163</sup> and the idea that only that which can be measured can be valued. He highlights the modern emphasis on maximising efficiency.

His concept of performativity foresees the commodification of knowledge, and with that, the drive towards standardisation. Much has been written about the complexities of assessing students in a clinical setting, in relation to the variability of the work where different cases require different amounts of effort, and where students often work in pairs or even teams.<sup>164</sup> As a result, I had worked in and led assessment review teams in the clinic, looking at the use of student blogs, the way in which reflections were assessed, and the use of grade descriptors. I developed a grade descriptor system for assessing reflections and argued successfully for the reduction in the number of reflection pieces from three to two. My view was that our assessment processes, whilst not perfect, were robust.

The appointment of a new lead external examiner, part of the quality assurance system within Universities, brought this issue to the fore and led to a series of meetings in which I had the opportunity to explain and discuss the work of the law clinic, the methods of teaching and learning, including assessment. Several observations were made, including some recommendations for change. On the majority of these 'observations' we were able to find a



<sup>162</sup> Derek Rowntree, *Assessing students : how shall we know them?*, Rev. ed.. ed. (London: London : Kogan Page, 1987).

<sup>163</sup> Jean-Francois Lyotard, Geoff Bennington, and Brian Massumi, "The Postmodern Condition: A Report on Knowledge," (1984).

<sup>164</sup> G. Schrag Philip, "Constructing a Clinic," *Clinical Law Review* 3 (1996): 202.

middle way, where I would seek to move towards some change, for example, reminding all clinic staff to include detailed written feedback on student work. However, one change which the external examiner was determined to pursue initially was to introduce uniformity of experience. He struggled with the idea that the student experience was driven to a great extent by the progress of the live casework. He was adamant that a grid system should be introduced, on which supervisors would record various tasks or experiences, such as 'writing a letter', 'completing a research report', so we could ensure that each student was completing an allocated number of such tasks, and that therefore was limited variety in what individual students did in the clinic.

At the time, I had no theory to draw on. I knew innately that this reductionist approach would not benefit the current rich experience of students. The 'messiness' of clinic, the lack of a standard experience, the fact that one research report into an aspect of a case can be four pages long, another could be 40 pages, that cases could take less than a year or last years, led me to resist this attempt to standardise. I argued my case, on behalf of staff and students, to the best of my ability, based on 15 years of experience, and 'gut knowledge' that this proposal was not in the interests of rich student learning. In fact, for other reasons, the external examiner and the university parted company. However, I realised that I did not have the theoretical knowledge to articulate my opposition to standardisation whilst defending the validity and reliability of our clinic assessment.

I had already jointly published a critique on teaching legal writing skills in an experiential environment, which touched on theories of schema and scaffolding learning.<sup>165</sup> However, through involvement in organising and participating in a conference in 2015 on assessment, I

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<sup>165</sup> Carol Boothby and Cath Sylvester, "Getting the fish to see the water: an investigation into students' perceptions of learning writing skills in academic modules and in a final year real client legal clinic module," *The Law Teacher* 51, no. 2 (2017), <https://doi.org/10.1080/03069400.2015.1070650>.

was introduced to a rich seam of research by van der Vleuten, based on the assessment of student doctors.

From this, I developed a hypothesis that, as long as we understand and value professional judgement, as identified by van der Vleuten,<sup>166</sup> then the richness of the clinical experience can be robustly defended – provided that we are aware of some of the pitfalls. As van der Vleuten states, there is ‘no need to banish from our toolbox assessment instruments that are rather more subjective and not perfectly standardised, on condition that we use them sensibly and expertly’.<sup>167</sup> Based on the work of van der Vleuten, I argue that; ‘Authenticity is valued, as is the role of professional judgment by those assessing. Tasks should be treated in a holistic rather than reductionist way’.<sup>168</sup> In this way, clinic could be seen as emulating the current concepts of best assessment practice, in terms of constructive alignment, and my research was able to support clinicians in defending the value of the clinical experience within the curriculum. It also provided a framework through which I was able to respond to the consultation on the proposals for the new Solicitors Qualifying Examinations (SQE). I drafted a response on behalf of both LEAPS (Legal Education and Professional Skills research interest group within Northumbria)<sup>169</sup> and CLEO (Clinical Legal Education Organisation),<sup>170</sup> a national organisation representing university law clinics incorporating comments to challenge the underlying assumption that the over-riding need is for standardisation, and that this equates to validity. Linked to this is the assumption, as implied by the external examiner, that only

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<sup>166</sup> Cees van der Vleuten and Lambert Schuwirth, "Assessing professional competence: from methods to programmes," (Wiley-Blackwell, 2005).

<sup>167</sup> van der Vleuten and Schuwirth, "Assessing professional competence: from methods to programmes," 312.

<sup>168</sup> Boothby, "'Pigs are not fattened by being weighed' – so why assess clinic- and can we defend our methods?."

<sup>169</sup> LEAPS Legal Education and Professional Skills [northumbria.ac.uk/about-us/academic-departments/northumbria-law-school/law-research/legal-education-and-professional-skills/](http://northumbria.ac.uk/about-us/academic-departments/northumbria-law-school/law-research/legal-education-and-professional-skills/)

<sup>170</sup> [cleo-uk.org/resources/](http://cleo-uk.org/resources/)



that which can be measured is to be valued. Perhaps this is where there is a challenge to what might be called the epistemology of the university – Lucas wryly refers to there being a popular impression of academia as one where ‘the groves of academe are isolated havens, protected enclaves where disinterested inquiry and learning proceed unhindered by external interference’.<sup>171</sup> In fact, universities can be seen as continually shifting position in response to external factors, and consequently, academics are under pressure to shift with them. Perhaps this is even more marked where the course is linked to a vocation such as law - or perhaps it is that law as a university degree subject is particularly vulnerable, with, as Whitehead put it, an ‘oscillation in views on the purpose of the law degree’<sup>172</sup> as we can see in the two Legal Education and Training Reports (LETR) 17 years apart. The first (ACLEC report 1996) recommended inter alia that the LLB should provide a broadly liberal degree rather than purely vocational one in light of the number of students who follow careers other than as lawyers, and that provision would be enhanced if universities were allowed to decide on curriculum content and delivery.<sup>173</sup> The second report in June 2013 <sup>174</sup> expressed concerns over the lack of training in professional values and sought ‘increased standardisation of assessment’. This more recent LETR was undertaken on behalf of the Solicitors Regulation Authority (SRA), Institute of Legal Executives (ILEX) and the Bar Standards Board (BSB) and provided the foundations for the changes proposed by the SRA in its ‘Training for Tomorrow’ report.<sup>175</sup> The SRA proposals are to adopt the use of multiple choice questions as a single

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<sup>171</sup> Lucas C, ed., *Crisis in the Academy- rethinking American higher education* (London: MacMillan, 1996).

<sup>172</sup> Whitehead Richard W, "Teaching Legal Professionalsim : A Comparative Study of Teaching " *Journal of Commonwealth Law and Legal Education* 11, 1 (2016), <http://law-school.open.ac.uk/sites/law-school.open.ac.uk/files/files/JCLLE/JCLLE-Vol-11-No-1-Autumn-2016.pdf>

<sup>173</sup> Grimes Richard, "The ACLEC Report - Meeting Legal Education Needs in the 21st Century?," *Legal education review*.

<sup>174</sup> Julian Webb et al., *Setting Standards; The Future of Legal Services Education and Training Regulation in England and Wales* (2013).

<sup>175</sup> Solicitors Regulation Authority <https://www.sra.org.uk/globalassets/documents/sra/consultations/education-training-consultation.pdf>

threshold measurement to test students, presumably in order to purportedly achieve this standardisation, and their approach has been the subject of much critical examination.<sup>176</sup>

My own experience suggests that, in something as complex as clinical casework, a fair assessment is a complex one. A reductionist approach is of little value. Core values in seeking to capture validity in assessment require it to be complex, authentic and relational.

## 6.5 Risk

Here I examine the external framework in terms of some of the key professional requirements imposed by the regulatory framework for solicitors and barristers in England and Wales.

I then unpack some of the unique workload issues which arise as a result of the combination of these professional requirements and the standard of competence required for live client work, with the teaching and learning role of clinical supervisors, which suggests that supervisors are walking something of a tightrope.

### 6.5.1 The professional practice rules that frame clinical practice

As Thomas describes, in her exploration of the regulatory framework;

There are a multitude of regulatory challenges and restrictions facing clinics in England and Wales. These issues not only stymie innovations in clinic but can also leave solicitors practising in law schools feeling isolated, exposed and unwittingly vulnerable to regulatory and criminal sanctions.<sup>177</sup>

Any University approaching this for the first time could be forgiven for deciding it was too great an undertaking; a true in-house law clinic, which carries out litigious casework, is

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<sup>176</sup> Hall, "Glass houses: how might we decide on a "good enough" assessment to become a solicitor?." And Elaine Hall et al., "'What we did over the summer': updates on proposed reforms to legal education and training in England and Wales and in the Republic of Ireland," *Law teacher* 53, no. 4 (2019), <https://doi.org/10.1080/03069400.2019.1672949>.

<sup>177</sup> Linden Thomas, "Law clinics in England and Wales: a regulatory black hole," *The Law Teacher* 51, no. 4 (2017): 470, <https://doi.org/10.1080/03069400.2017.1322858>.

essentially a legal practice within the university itself. But definitions can be important, as I explored in a joint paper on changes to the regulation of legal entities through the Legal Services Act 2007.<sup>178</sup> The Student Law Office is not strictly speaking an *in-house* legal practice – that role is already fulfilled within universities by their own legal department, which advises the university management on a wide range of legal issues. Indeed, with the advent of the Alternative Business Structure (ABS) some university law schools such as those at Nottingham Trent and Sheffield Hallam have been creating complete legal practice entities raising the possibility of charging clients. Analysis of the dialogic interviews indicates that the role of the law clinic supervisor, as exemplified at Northumbria Law School Student Law Office, is a unique one, and is different from that of a solicitor in legal practice. But it is also different from the role of an academic member of staff – even where that member of staff deals with Work Integrated Learning (WIL) such as placements, externships, simulations, problem based learning or other forms of experiential learning. The complexity of the role lies to a great extent in the overlaying of the professional requirements of practice<sup>179</sup> into the curriculum and onto the teaching and learning requirements of a university module. Unlike many academics, who simply draw on past practitioner experience in their new role within higher education, those conducting casework in law clinics must continue to fulfil the requirements of their professional bodies, indeed, must continue to hold a practising certificate and maintain professional levels of competence. The demands of those professional requirements cannot be understated, and some of the consequences of a failure to properly comply are serious. The SRA can impose fines currently of up to £2000 or rebukes,<sup>180</sup> but if a breach of

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<sup>178</sup> Campbell and Boothby, "University law clinics as alternative business structures: more questions than answers?": Edited by Francis King."

<sup>179</sup> [sra.org.uk/solicitors/standards-regulations/index/](https://sra.org.uk/solicitors/standards-regulations/index/)

<sup>180</sup> [solicitors.tribunal.org.uk SANCTIONS](https://solicitors.tribunal.org.uk/SANCTIONS)

conduct is serious enough, it can result in a referral to the Solicitors Disciplinary Tribunal, which can prevent a solicitor from practising by suspending them indefinitely or for a fixed period, or permanently striking them off the Roll. It can also impose an unlimited fine. I explored the risks of clinic in a funded project through the British Embassy, working with Zagreb University (see publication list). The main professional conduct issues for law clinics are visualised below.



**Figure 12: Professional conduct -risks**

Three examples of the areas where professional conduct/misconduct could have serious consequences are money laundering, data protection and professional negligence, and these are explored briefly below to illustrate the seriousness of breaching these, where the consequences of breach can be both personal and institutional, and the responsibility supervisors bear, particularly when supervising inexperienced student novices.

### 6.5.2 - Money Laundering

Lawyers face up to 2 years imprisonment for breaches of money laundering regulations. Whilst the Northumbria law clinic (in common with most UK law clinics) was at low risk of money laundering issues, (not having a client account and not normally dealing with conveyancing or cases with overseas jurisdictions), there nevertheless were risks of sham litigation, and situations which required thorough due diligence, such as the creation of trusts/companies/charities. Not only did practices policies and procedures have to be updated, supervisors and students had to be trained and updated on the importance of client due diligence.

But this is not all; recently introduced regulations such as the GDPR <sup>181</sup> (the legal framework that sets guidelines and processing of personal information) has increased the risks of fines – and these fines can be unlimited. This can impact on universities generally, and there have already been fines of at least one University for breach of confidential student information.<sup>182</sup> But an in-house law clinic such as the Student Law Office collects a whole mass of data, storing information not only on students, but also on members of the public, including potentially sensitive data such as medical records, contact details, and financial information. The storage and processing of this information must comply with the GDPR, as well as with the requirements of the Solicitors Regulation Authority (SRA), for example, to store client files for at least 6 years (longer in other cases such as family and children cases ) and to maintain a register which enables the clinic to avoid conflicts of interest. Add to this the fact that this information on clients is being shared with students, often a total clinic cohort of over 200

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<sup>181</sup> <https://www.gov.uk/government/publications/guide-to-the-general-data-protection-regulation>

<sup>182</sup> [The University of Greenwich fined £120,000 by Information Commissioner for “serious” security breach | ICO](#)

students per year, and it is clear that the level of risk and responsibility for those teaching staff involved in the clinic, and in particular for the Director, is on a different level from that of teaching within the conventional curriculum. Those lawyers teaching within the live client clinic providing legal advice must hold a current practising certificate, issued by the Solicitors Regulation Authority, and serious breaches of professional conduct can result in the suspension or removal of this, something which lawyers would perceive as a catastrophe in terms of their professional career- the equivalent of being struck off the medical register as a doctor.

### 6.5.3 Confidentiality and data storage

But probably the most common, challenging and anxiety- provoking aspect of clinic for supervisors, and anyone in the role of Director, relates to client confidentiality, which overlaps with the GDPR requirements, but extends more widely. The Student Law Office has been lucky enough to have its own office space, and has worked on the basis of this being a ring-fenced area within which all client- related information must remain. But of course, that is a simplification of the issue. Students visit their supervisors shared office space to discuss their cases, at risk of doing so in the presence of other law school staff. Students are told not to discuss their cases outside the office, but policing this depends very much on trust. Even within the Student Law Office, issues have arisen in relation to the cohort of students being free to access all the client files within the office. Where those cases have contained very sensitive information, for example in relation to a sexual nature, or where the case relates to a client who is also a student in the law school (as can often be the case with tenancy disputes), the law clinic adopted a practice of locking the case files in an allocated filing cupboard, with the key under the care of the administrator.

The most challenging aspect of confidentiality is the use of email and electronic communication generally. Originally, the process of work being checked by supervisors was a paper based one, with the use of work in and out trays. In common with most offices, that has moved over time to electronic exchange via e mail and word documents. It took some time for the relevant arm of the university to take on board concerns over this use of students' main university e mail for client work. However, to the relief of supervisors, the clinic did move to a separation of the students' emails and storage of work to a dedicated confidential space on-line, with separate student email addresses for clinic work. But this system relies on students attending the Student Law Office to access their clinic work and case files, and to discuss their casework with fellow students, as there is effectively a closed system, preventing remote access from outside the office itself – providing an essential safeguard, but limiting options for working more flexibly in a post COVID world.

#### 6.5.4 Competence, negligence risks and insurance

All these points of concern are in addition to the over-arching responsibility falling on all supervisors of providing competent legal advice and representation to clients, through students. This process is very different from taking instructions first hand, drafting advice and providing this direct to clients. In the Student Law Office, supervisors do not generally meet the client, and therefore are one step removed, reliant on the information gathered by students, which is inevitably filtered. The risks of misunderstanding are heightened, and the nuances of the client interview can be lost. Supervisors coped with this by limiting the retainer and scope of work with the client, and sometimes by sitting in on interviews, or watching the recordings of interviews – although this was time consuming – or in rare cases, conducting the interview themselves, with the students observing (although this then undermines the

authority of the students, and leads to the client always expecting to engage with the supervisors)

A key issue is the obligatory provision of insurance cover for the clinic – required by the SRA, but also essential for supervisors who need to know they would be indemnified in the event of a claim by a client for negligence. Northumbria University provides such insurance cover, although even that remained the subject of intermittent queries, some of which remained unresolved – there was an ‘excess’ on the policy – would the supervisor have to pay this themselves? Was the cover really sufficiently broad to cover the type of potential professional negligence involved in client litigation? According to Thomas, it may not be.<sup>183</sup> She makes cogent arguments that ‘a university’s professional indemnity insurance is almost certainly not going to be comparable to an MTC<sup>184</sup> compliant policy’, but does acknowledge that ‘it is likely that the overall indemnity cover provided by university insurers for any one event will be a relevant factor to be balanced against the risk and value of cases being taken on by the clinic’.<sup>185</sup> In fact, over the last 20 years, as far as I am aware there had been virtually no such claims made.<sup>186</sup> There were none during the 8 years I held the role of Director, and I am only aware of one in the preceding 5 years. Joy and Kuehn indicate that there is very little if any data available on such claims.<sup>187</sup> and conclude from their enquiries that the incidence of these claims is extremely low. However, for individual supervisors wishing to protect their practising certificates and professional reputation, this was a constant concern, and in my role as

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<sup>183</sup> Thomas, "Law clinics in England and Wales: a regulatory black hole."

<sup>184</sup> Minimum Terms and Conditions, as required by the Solicitors Indemnity Insurance Rules

<sup>185</sup> Thomas, "Law clinics in England and Wales: a regulatory black hole," 5.

<sup>186</sup> A. Joy Peter and R. Kuehn Robert, "CONFLICT OF INTEREST AND COMPETENCY ISSUES IN LAW CLINIC PRACTICE," *Clinical Law Review* 9 (2002).

<sup>187</sup> The only apparent reported case involving malpractice against a law clinic is *Juengain v Johnson* 571 So.2d 167 (Ct.App La. 1990) and this was dismissed



Director, was the subject of frequent discussions with concerned supervisors, where we explored the often-nuanced aspects of their conduct of cases.

Changes made to the regulatory framework for solicitors could have an unforeseen impact on the operation of university law clinics, as has been the case with aspects of the Legal Services Act 2007, which failed to take any account of the unusual position of university law clinics providing pro bono legal services and created uncertainty and anxiety for many involved in supervision of this work, as well as highlighting the unique position of this group of legal professionals teaching in clinic.<sup>188</sup>

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<sup>188</sup> See Thomas's excellent paper for a summary of these issues, Thomas, "Law clinics in England and Wales: a regulatory black hole."

## Chapter 7- Returning to the theory of Community of Practice - in an environment of change

### 7.1 Introduction

At the point of taking over as Director of the Student Law Office (2009), I sought to create a co-caring community of practice. This practice showed itself by a personal approach to all supervisors, meeting them individually, adopting an open-door policy, trying to find out their concerns and suggestions, seeking input from them on teaching and learning issues, holding regular meetings to provide feedback from students, to reflect on our teaching practice, and explore aspects such as consistency in assessment. These meetings (which were in addition to monthly management meetings to run the legal practice aspect of the clinic), at the start and end of the academic year, would be to reinforce the sense of being a community of practice – we would discuss the challenges of teaching and supervising, balancing work, and an overarching theme would be sharing good practice, with a corollary of moving towards some level of consistency, or at least critiquing our own teaching practice. It was a community of practice which provided support and encouraged co-operation and an exchange of experience – seeking to create a ‘critical space’<sup>189</sup> where our experiences as supervisors could be reflected on, and where possible, positive changes made. I obtained funding to run workshops on clinic open to clinicians from all over the country,<sup>190</sup> and to run a student-led conference on clinic and pro bono.<sup>191</sup>

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<sup>189</sup> Duckworth et al., "Creating feminized critical spaces and co-caring communities of practice outside patriarchal managerial landscapes."

<sup>190</sup> See a blog on my clinic workshop funded by Higher Education Academy in 2014

<https://www.heacademy.ac.uk/running-legal-clinic-facing-challenges-and-sharing-good-practice>

<sup>191</sup> <https://www.northumbria.ac.uk/about-us/academic-departments/northumbria-law-school/study/student-law-office-conference-registration/>

This took place in the context of a policy and identity shift as demonstrated in Northumbria University's Vision for 2025 is 'to be a research-rich, business-focused, professional university with a global reputation for academic excellence'.<sup>192</sup> Much to be commended, but many colleagues noted the absence of any specific reference to teaching in this, and in the narrative outlining the 2013-8 corporate strategy. It seemed that what had been valued, was no longer valued as much – or was seen as a 'given'. However, the position of the law clinic was strong, bolstered by the winning of various awards. Receiving the enormously prestigious Queens Anniversary Prize<sup>193</sup> provided a 'shield' against what felt like the almost predatory approach of the central university – although it did not protect us from losing one of our highly valued administrative staff as a result of the contemporaneous staff re-organisation. It was clear that, whilst excellence in teaching was taken for granted, and National Survey of Students feedback was expected to be increasingly positive year on year, there was now an expectation in terms of all staff being 'research active'.

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<sup>192</sup> [northumbria.ac.uk/about-us/our-vision](http://northumbria.ac.uk/about-us/our-vision)

<sup>193</sup> <https://bdaily.co.uk/articles/2013/11/22/northumbria-university-scoops-queens-prize-for-student-law-work>

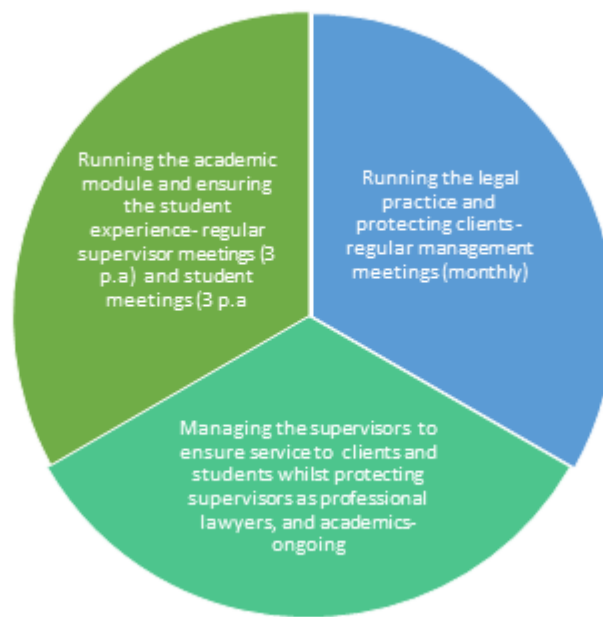


Figure 13 – balancing the demands of clinic leadership

The 'pie' represents the key demands on anyone leading a clinical program. This is without the additional requirements imposed by the research agenda, one of which was to free up time to give clinic staff the opportunity to engage in research activity. As none of the existing activities were reduced, inevitably the size of the pie simply grew. I continually examined where time savings could be made for supervisors. In terms of running the Student Law Office as a legal practice, there was little possibility, and if anything, the professional requirements grew with new rules on money laundering and due diligence. Assessment was something much discussed at the regular supervisor meetings, but as discussed in chapter 6, to achieve a fair and rigorous assessment in something as complex as clinic requires a complex and robust assessment. Inevitably, supervisors looked to reduce the enormous demands on their time generated by casework and would consider limiting their availability to students as opposed to the 'open door' policy generally available to clinic student, offering limited retainers to clients, reduce the number of cases they took on, and in some cases make greater use of mock scenarios as part of the induction to clinic. But these changes could only go so far

before impacting on the experience of students, for whom this was the module they had waited for 3 years to take part in. From the viewpoint of the Director, the greatest risk in these changes, and one which potentially generated even more work for me, was the disparity this could create between different students in different 'firms'. The lack of uniformity of the student experience in clinic is an inevitable consequence of the live casework model, and students could accept this. But clear differences in approach to workload generated complaints from students who felt they had too much work, and those who felt their supervisor was requiring too little of them. As Director, the research agenda added another layer of complexity to the management of the program, not least with the expectation of some supervisors to now be unavailable during term time while engaging in research activities, but while still running live cases.

## **7.2 Performativity, the research agenda and the impact on the law clinic as a community**

Performativity 'requires individual practitioners to organize themselves as a response to targets, indicators and evaluations'.<sup>194</sup> However, this is too general a definition, and does not give any sense of the impact that a shift in the aims of the University, as expressed through its corporate strategy, had on individuals. Previously those academics who wished to focus their efforts on teaching and learning could do so, whilst those who preferred to publish, could put more time and effort into that – although it has to be said that, predictably, with a culture focussed on teaching, there was little sense of a research community, and 'serious' researchers tended to move on to other universities. Previously, staff performance as

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<sup>194</sup> Ball, "The teacher's soul and the terrors of performativity."

teachers served as the measure of productivity, as 'output'. In the law clinic, it was the supervisor's expertise in providing this world-renowned authentic experience so highly valued by students. Now performance was measured by research output – as many commented ruefully, 'the goalposts had moved'. As Ball observes, these performance indicators 'encapsulate or represent the worth, quality or value of an individual or organization within a field of judgement. The issue of who controls the field of judgement is crucial'.<sup>195</sup> As time went on, it became more and more difficult for the Law School to recruit the type of practitioner that I was when I joined the University, with recruitment requirements set by central University in terms of research record and experience forming some of the essential requirements. As Pilcher argues, from the point of view of the Universities, 'career academics are appealing...they bear the promise of research funding...'<sup>196</sup> The introduction of the TEF<sup>197</sup> attempts to rebalance this bias towards research but this focusses on the mechanics of teaching delivery without really considering the importance of practitioner experience to the student experience, and is unlikely to provide the necessary counter to the effects of the REF.

The strength of the team of clinical supervisors was in the ability to act as a highly motivated and committed team, to ensure that the clinic ran smoothly as a legal practice within the bounds of professional conduct and practice rules, that clients received competent if not excellent service, and that students benefitted from an authentic experience that could at its best be transformational. The practice domain had expanded beyond our original profession,

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<sup>195</sup> Ball, "The teacher's soul and the terrors of performativity."

<sup>196</sup> Nick Pilcher, Alan Forster, Stuart Tennant, Mike Murray & Nigel Craig (2017) Problematising the 'Career Academic' in UK construction and engineering education: does the system want what the system gets?, *European Journal of Engineering Education*, 42:6, 1477-1495, DOI: [10.1080/03043797.2017.1306487](https://doi.org/10.1080/03043797.2017.1306487)

<sup>197</sup> Teaching Excellence Framework <https://www.gov.uk/government/collections/teaching-excellence-framework>

that of legal practice, to now include our teaching and learning role, in which we modelled to students what it was to be a lawyer. Now, it seemed, further transformation was required, and my role as Director included mediating this change, as a 'technician of transformation' with echoes of what Ball, with echoes of Foucault, calls 'technicians of behaviour'.<sup>198</sup>

Perhaps reminding us again of Spjut, Harman describes the disdain that some in academia could (at least in the past) express for their more practice-based colleagues;

discipline-directed academics typically view any commitment to client-orientated practice . . . as counter to scholarly ideals and intellectually stultifying . . . the further they distance themselves from involvement in vocational 'hands-on' work the greater they believe their academic status to be.<sup>199</sup>

What of the practitioners? Harman posits that 'practice-orientated staff, on the other hand, are critical of basic research that has no practical relevance and the arrogance with which the theoreticians hold their views'.<sup>200</sup>

Universities have changed over the intervening thirty years since the original work of Harman and with the 'massification' of universities towards the end of the 20<sup>th</sup> century and an increasing focus on vocationalism, now expressed as employability. Law, in common with medicine, has a more obvious potential for vocational and practical links, and the curriculum at Northumbria has, even back to the early 90's been very strongly vocational, with little reputation for high level research. Indeed, research as a topic was very little discussed, between staff or at meetings. Staff contributed to practitioner texts, rather than 'pure' research, which essentially would be papers based on 'black letter law' topics. But as the

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<sup>198</sup> Ball, "The teacher's soul and the terrors of performativity."

<sup>199</sup> K. Harman, "Professional versus academic values: cultural ambivalence in university professional school in Australia," *Higher Education* 18, no. 5 (1989): 506, <https://doi.org/10.1007/BF00138744>.

<sup>200</sup> Harman, "Professional versus academic values: cultural ambivalence in university professional school in Australia," 506.

University environment moved towards a 'publish or perish' approach, it became more apparent that the law clinic needed to appreciate the threats and opportunities this new strategy posed, and to have the opportunity to participate in the research agenda and requirements being imposed on teaching staff.

Wenger points out that 'not all the value produced by a community or a network is immediately realized' and that "activities and interactions can produce 'knowledge capital' whose value lies in its potential to be realized later'.<sup>201</sup> The law clinic was an immensely rich source of knowledge capital, and as Director, I recognised some but not all of this potential. According to Wenger, this knowledge capital can take different forms: I have looked at how this maps onto the law clinic as a community, and then how this was then transformed to include a research community.

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<sup>201</sup> E. Wenger, B. Trayner, and Maarten Laat, "Promoting and Assessing Value Creation in Communities and Networks: A Conceptual Framework," (01/01 2011): 23.



	Wenger's definition of communities of practice	As made visible in law clinic	Manifested in the research agenda adopted by the law clinic
Personal assets (Human capital).	This can take the form of a useful skill, a key piece of information, or a new perspective. It can also consist of new ideas to address a class of problems. The ability to keep up with a rapidly changing field is also important. But <b>the personal value of participation in a community or network can also be inspiration, caring, confidence, and status.</b> Some people report that participation in a community of practice has reawakened <b>their sense of calling and professional identity.</b>	Highly dedicated core staff cohering around a common purpose.	Individuals become recognised in their field (often a strand within experiential learning, such as Streetlaw, pro bono, assessment within experiential learning) and take up roles within research publications
Relationships and connections (Social capital).	This sees social relations and connections as a form of knowledge capital. The ability to ask questions because one knows who to ask and who to trust can be as valuable as personal information or commitment. One's reputation is another social achievement that can become a knowledge resource. <b>Communities and networks can build shared understanding and develop a common language;</b> social resources can facilitate further learning and communication. All this can lead to potential opportunities for collaboration and the ability to promote a cause. And one should not underestimate the value of a sense of companionship in the face of demanding tasks and learning challenges.	Ability to work in a team, to put interests of the community first, to create networks with others, work cooperatively. Flexibility. Leadership of organisations such as CLEO (Clinical Legal Education Organisation)	Input into and networks created by seminars <sup>202</sup> and conferences such as IJCLE, ENCLE, journals such as International Journal of Public Legal Education Creation of the LEAPS research group 2013 which became a signature group within the university <a href="https://www.northumbria.ac.uk/about-us/academic-departments/northumbria-law-school/law-research/legal-education-and-professional-skills/">https://www.northumbria.ac.uk/about-us/academic-departments/northumbria-law-school/law-research/legal-education-and-professional-skills/</a>

<sup>202</sup> Elaine Hall, "The Special Issue: Problematising Assessment in Clinical Legal Education," 2016 23, no. 1 (2016-01-12 2016), <https://doi.org/10.19164/ijcle.v23i1.487>, <https://www.northumbriajournals.co.uk/index.php/ijcle/article/view/487>.

Resources (Tangible capital).	This includes specific pieces of <b>information, documents, tools and procedures</b> , but also increasingly networked information sources, tag clouds, mind maps, links and references, search capabilities, visualization tools, and other socio-informational structures that facilitate access to information.	-The physical resources of a purpose built space, as a focus for the knowledge capital, and the support of dedicated administrators. -Module documentation (assessment, guidance on reflection/grade descriptors) -Student Law Office handbook for students, guides for clinical supervisors, annual reports , module data	Publications, development of areas of expertise by clinical teachers , comments on consultations
Collective intangible assets (reputational capital).	Such assets include <b>the reputation of the community</b> or network, the status of a profession, or the recognition of the strategic relevance of the domain.	Highly respected clinic with numerous awards – National Training Awards, Queens Anniversary prize. Providing support to other law clinics nationally and internationally	CATE awards leading to Frolic project creating and disseminating research. Impact case study for REF <a href="https://www.advance-he.ac.uk/awards/teaching-excellence-awards/collaborative-award-for-teaching-excellence/winners">https://www.advance-he.ac.uk/awards/teaching-excellence-awards/collaborative-award-for-teaching-excellence/winners</a>
Transformed ability to learn (learning capital)	The act of participating in a facilitated network or a community as a valuable way of learning can be enlightening for people for whom formal teaching or training methods have always been seen as the only way to learn. <b>When members have experienced significant learning in networks or communities, they can transfer this experience to other contexts.</b>	High capacity to adapt , to develop multiple areas of expertise/research outputs spanning teaching and learning, assessment, regulatory issues, ethics, social justice	Participation by clinical team in research agenda and doctoral program. Ability to contribute significant achievement in terms of publications – see LEAPS publications

Figure 14 : Looking at how Wenger's concept of 'community of practice' is made visible in the law clinic at Northumbria and manifested in the research agenda adopted by the law clinic.

The law clinic had significant strengths in all these areas, and had to rely on all of them, but in particular needed to mobilise an ability to learn, in this case, to learn how to utilise and recognise the extensive experience in clinic as a being a significant resource on which to draw. To some extent that the day-to-day existence for the clinic was not sufficient and that rather like Foucault's 'disappearance of man' proposition,<sup>203</sup> if we as individuals (but also as the clinic community) did not publish or disseminate, we were in danger of becoming invisible/disappearing, as tacit knowledge is valued less than knowledge made permanent through publication within the academic paradigm. As Mkwebu<sup>204</sup> recognises, commenting on the lack of published research relating to students views of clinic, "what we have is only talk". The university shifted towards research publication as the dominant paradigm, but in addition, academic researchers at other institutions were starting to use the Northumbria law clinic as material for their own research.<sup>205</sup> From 2009, I had created annual reports for the law clinic, summarising and capturing the law clinic activities, including some data on numbers of students and cases, student feedback and client comments. However, this collection of data lacked any academic analysis, and whilst invaluable, almost as an artefact, curating the activities of the clinic contemporaneously, there was no theoretical framework or analysis of the data contained in the reports.<sup>206</sup>

In 2010 a Professor of Legal Education was appointed a new post to promote and develop experiential learning. With his help, I created an in-house repository for research work

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<sup>203</sup> M. Foucault, *The order of things: An archaeology of the human sciences* (2018).

<sup>204</sup> Mkwebu, "Clinical pedagogy : a systematic review of factors influential in the establishment and sustainability of clinical programmes and a grounded theory explication of a clinical legal education case study in zimbabwe."

<sup>205</sup> "Clinical Legal Education and Experiential Learning," 2016, <https://hummedia.manchester.ac.uk/schools/law/main/news/Clinical-Legal-Education-Final-Report28.09.2016.pdf>.

<sup>206</sup> Student Law Office report accessed April 2021 [northumbria/law/annual-report/student-law-office-annual-report-2016.pdf](https://northumbria.ac.uk/law/annual-report/student-law-office-annual-report-2016.pdf)

centred on clinic, including the idea of ‘fry ups’ - ideas for papers at an early stage which could then be explored and discussed with colleagues. I created a clinic research day, to discuss ideas around research into clinic and experiential learning. A number of incidents stand out in my mind. One was the enormous gap between the level of knowledge of the staff attending this research day (including myself) and the aspects of research, the ‘toolbox’ which the Professor clearly took for granted. For example, none of us had even heard of Google Scholar, let alone the commonly used on-line resources such as ERIC (Education Resources Information Centre.)

I began organising staff clinic research lunches, where we chose a paper centred on experiential learning to discuss. Our first meeting was lively and on the face of it, appeared a great success, until the new Professor observed to me that ‘no-one talked about their research – only their teaching.’ This was true – staff used the research paper as a focus to speak passionately at the meeting about the challenges of teaching in the law clinic, but few present had on-going research projects to draw on. This second observation illustrated the nature of our roles at that time, and the imperative to understand what it was to be research active.

What did become clear was that writing about clinical teaching and experiential learning meant becoming a researcher in education, teaching and learning – an area which even those working within it acknowledge as ‘a problematic concept’<sup>207</sup>, drawing as it does on multiple theoretical frameworks. This was daunting. Law clinic expertise was as lawyer/practitioners using that domain-specific expertise in teaching through casework. Clinical supervisors used

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<sup>207</sup> R. M. Lofthouse, D. Leat, and A. Reid, *Teachers’ views: perspectives on research engagement* (BERA/RSA, 2014).

their experiences as lawyers – as Simendinger et al. put it, (when talking generally about practitioner–academics), “the concrete examples and illustration, through which they have lived”.<sup>208</sup> In terms of research, they had no ‘feel for the game’, as Sayer describes it.<sup>209</sup> Their ‘habitus’ was based on a long-standing professional commitment to serving clients, and supporting colleagues such that, as a community of practice, professional standards were maintained. Whilst the teaching through clinic was excellent, as demonstrated through various quality assurance observations, supervisors could struggle to ‘name’ what it was they did, or to articulate in scholarly terms the pedagogical underpinning of the clinical work. As Whitehouse points out, this lack of substantive research ‘has the potential to ghettoize CLE’ and to make it ‘a task separate ...from the rest of the academic community’.<sup>210</sup>

Most clinical supervisors had only had a fairly rudimentary introduction to theories of teaching and learning when joining the university, through courses such as the Postgraduate Certificate in Academic Practice (PCAP). Some (myself included) undertook further studies such as the Masters in Academic Practice, which included modules on research methods, and the Scholarship of Teaching and Learning, both of which were to prove very useful as the university agenda turned towards a more coercive approach to published research outputs.

Moving from a practitioner focus to encompass academic research around clinic requires a reframing of the epistemology relating to clinical teaching. As Mezirow states, practitioners ‘need practice in recognizing frames of reference and using their imagination to redefine the

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<sup>208</sup> Earl Simendinger et al., "The career transition from practitioner to academic," *Career Development International* 5, no. 2 (2000), <https://doi.org/10.1108/13620430010318990>.

<sup>209</sup> Margaret Scotford Archer, *Conversations about reflexivity* (Abingdon, Oxon New York, NY

London: Routledge, 2010), 108.

<sup>210</sup> Lisa Whitehouse, "Research-Based Clinical Legal Education: A Contradiction in Terms or a Win-Win? Lessons from a UK Pilot Study," *2019* 27, no. 1 (2019-12-20 2019), <https://doi.org/10.19164/ijcle.v27i1.853>, <https://www.northumbriajournals.co.uk/index.php/ijcle/article/view/853>.

problems from different perspectives'.<sup>211</sup> For the clinical supervisors, their existing knowledge constructed through their experience of fusing the practitioner and teacher roles was complex but tacit, and needed to become explicit. Nerland and Jensen, drawing on the work of Knorr Cetina, refer to 'the emphasis on making processes of knowledge production transparent, which has been valued in research communities' and that this can exist in other knowledge work. They recognise that 'whilst this may reflect "accountability regimes" it might also open new opportunities for engagement and provide access points for practitioners to take part in their professions larger "machinery of knowledge construction" '.

<sup>212</sup> An example in the context of the Northumbria law clinic is the work contributed by the clinic research group in challenging and critiquing moves by their professional body on various topics including the proposals for alternative business structures,<sup>213</sup> and those on the changes to routes to qualification.<sup>214</sup>

In the context of law, how knowledge is produced, circulated and approached – 'epistemic objects' this could encompass the body of law seen as 'artefacts and resources'. For the law clinic, and clinical supervisors, if the dynamic body of knowledge that represents what clinicians do and know, is approached as an epistemic object, we can see the complexity, in that clinicians are at one and the same time looking outward from the university environment at the world of legal practice, encompassing dynamic client centred situations with as well as inward at the students-centred world of learning and teaching, and how experiential

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<sup>211</sup> Jack Mezirow, "Transformative Learning: Theory to Practice," *New Directions for Adult and Continuing Education* 1997, no. 74 (1997): 10, <https://doi.org/10.1002/ace.7401>.

<sup>212</sup> Monika Nerland and Karen Jensen, "Epistemic practices and object relations in professional work," *Journal of Education and Work* 25, no. 1 (2012): 102, <https://doi.org/10.1080/13639080.2012.644909>.

<sup>213</sup> Campbell and Boothby, "University law clinics as alternative business structures: more questions than answers?: Edited by Francis King."

<sup>214</sup> Rachel Dunn, Victoria Roper, and Vinny Kennedy, "Clinical Legal Education as Qualifying Work Experience," (2018).

pedagogy works. The codified legal information, drawn from case law and statute is combined with knowledge of practice and how the client's case may evolve.

In this sense, the Students Law Office itself could be seen as a as an 'artefact', or even an epistemic object, in that it makes a phenomenon visible - that of experiential learning in law, representing the synthesis of these two worlds (of practice and pedagogy) and knowledge contexts.

Or perhaps, looking at the work of Star on boundary objects<sup>215</sup>, we could more accurately see the Student Law Office, in terms of the physical aspects of the office itself, and the framework it provides as a boundary object. Star's concept of a boundary object is a specific one – a boundary here means 'a shared space', and an object is something people 'act toward', and this is often linked to the concepts around communities of practice. Perhaps it is the various work practices represented by the office, the synthesised understandings and practice-specific meaning, the dynamic interactions and responses to external change which form the epistemic object, and in fact, the Student Law Office, as an entity, is a boundary object.

The imposition of a research agenda measuring outputs was only ever going to be of limited effect, but it formed the 'push' towards seeing the world through a research 'lens'. Asking the questions 'how do clinicians know what they know', and 'how do we know that clinic and experiential learning work?' formed the 'pull' towards this new way of knowing. Moving from a practitioner focus to encompass academic research requires a reframing of the

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<sup>215</sup> Susan Leigh Star, "This is Not a Boundary Object: Reflections on the Origin of a Concept," *Science, Technology, & Human Values* 35, no. 5 (2010): 603, <https://doi.org/10.1177/0162243910377624>, <https://journals.sagepub.com/doi/abs/10.1177/0162243910377624>.

epistemology and this was one of the ways in which our current research lead<sup>216</sup> illuminated for the clinicians why academic research might be worth doing.

### 7.3 Knowing, acting and being – a journey of risk and uncertainty

Hall has explored the nature of the new DLaw program at Northumbria and what can seem to doctoral students an ‘unimaginable leap’ in seeking to achieve the ephemeral concept of ‘doctorateness’. This sense of crossing a chasm can be traced back to before the creation of the DLaw program in 2015 to the earlier efforts of clinical supervisors to publish work on legal education. As explored in Chapter 5, unlike most academic teaching, the nature of clinical supervision in a live client context is one of dealing with risk and uncertainty. Every case is different – even where the legal issues are similar, the facts and circumstances of each client bring different demands. Therefore, one might assume that clinical supervisors would be easily able to bridge the transition to developing a research active role around their knowledge of clinical teaching. However, whereas individuals may be confident within their circle of expertise, moving into a new area as a learner can be challenging. After all, it involves a further process of ‘professional socialisation’.<sup>217</sup> We can distinguish between the stages of ‘knowing about’ research, for example in terms of core knowledge such as research methods, and ‘being’ that is, becoming a fully-fledged researcher. Barnett and Coate characterise what is desired in education; the ‘triple engagement’ of ‘knowing, acting and being’.<sup>218</sup> Leat et.al explore these ideas of development as a researcher, in their examination of teacher research, and what it is to become a researcher.

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<sup>216</sup> Professor Elaine Hall [Elaine Hall \(northumbria.ac.uk\)](http://elaine.hall@northumbria.ac.uk)

<sup>217</sup> Jerry Wellington, "Searching for 'doctorateness'," *Studies in Higher Education* 38, no. 10 (2013), <https://doi.org/10.1080/03075079.2011.634901>.

<sup>218</sup> Ronald Barnett, *Engaging the curriculum in higher education*, ed. Kelly Coate (Maidenhead, England New York: Maidenhead, England New York : Society for Research into Higher Education : Open University Press, 2005), 108.



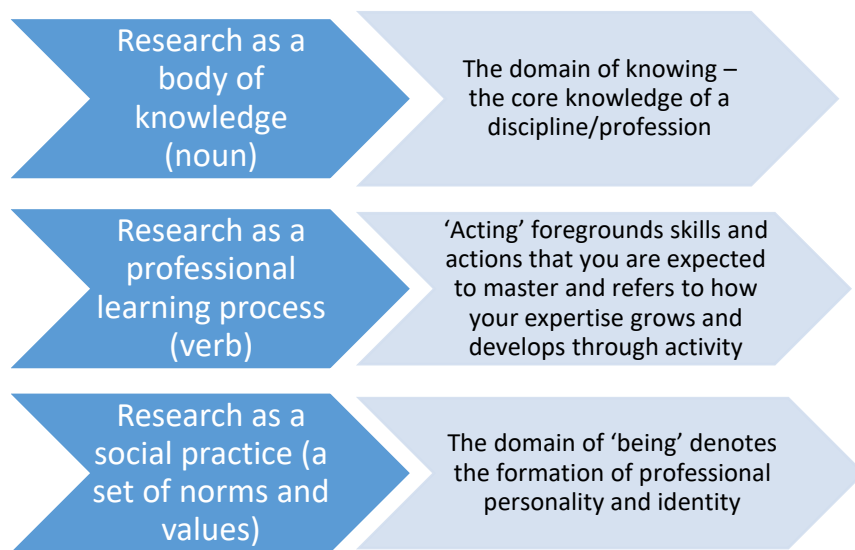


Figure 15 : Research and knowledge - becoming a researcher (adapted from Leat et.al)

Neat as it is, this only displays an objective representation of what was at times a frightening experience, as we were expected to move from positions of competence and security into spaces of risk, challenge and where we faced judgement against new criteria. The initial forays were rather like the parable of the blind men and the elephant, where each reach for a different part of the elephant – the tusk, the tail, the leg and each draws a conclusion from the incomplete knowledge they gain. I draw a veil over some of my own early drafts for publication. Thinking back to Schön’s ‘swampy lowlands’, it took some time to move from this feeling of drowning to any sense of competence.

From the original tentative steps through research training sessions and group meetings for clinic staff, some progress was made. However, the most significant influence was our current research lead for Legal Education research who oversaw the creation over time of a ‘safe space’ for researchers. Key steps in moving clinical supervisors and other academics involved in experiential learning towards becoming research active were;

- Creating safe conversations- all ideas welcomed, mutual respect engendered.

- Social /networking spaces – linking staff with others and seeing connections where staff could co-create research.
- Demonstrating/providing insights into how existing knowledge experience and identity could be built on, how this could be transposed onto the research identity.

Hall explores 'doctorateness' as a threshold concept for professional doctorate students and draws on experiences of doctoral students in the liminal space.<sup>219</sup> For me, in developing as an active researcher, one key threshold concept was how theoretical frameworks could be used by practitioners, and how, in using these, our clinical experience could be translated into more meaningful research. Generally speaking, clinic research has been characteristically narrative, descriptive. I read about these theoretical frameworks, we discussed theories at research group meetings (including the theory around threshold concepts themselves!) but found the leap of integrating my clinical work 'troublesome'. It was when I was invited to use a specific paper as a discussant (van der Vleuten's paper on professional judgement and assessment, referred to in Chapter 5 ) that I had one of the transformative moments referred to by Meyer and Land as 'akin to a portal, opening up a new and previously inaccessible way of thinking about something'.<sup>220</sup> This scaffolding enabled me to move across the 'zone of proximal development',<sup>221</sup> through Meyer and Land's 'liminal space', those periods of confusion and disorientation, towards what Keefer sees as perspective shifts that result in transformed ways of seeing one's self and /or one's research. The temporal and recursive nature of that experience is sketched out below.

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<sup>219</sup> Hall, "Grasping the nettle of 'doctorateness' for practitioner academics: a framework for thinking critically about curriculum design."

<sup>220</sup> Ray Land, "Threshold concepts and troublesome knowledge (2): epistemological considerations and a conceptual framework for teaching and learning," *Higher education* 49, no. 3 (2005): 1.

<sup>221</sup> Vygotskii, *Mind in society : the development of higher psychological processes*.

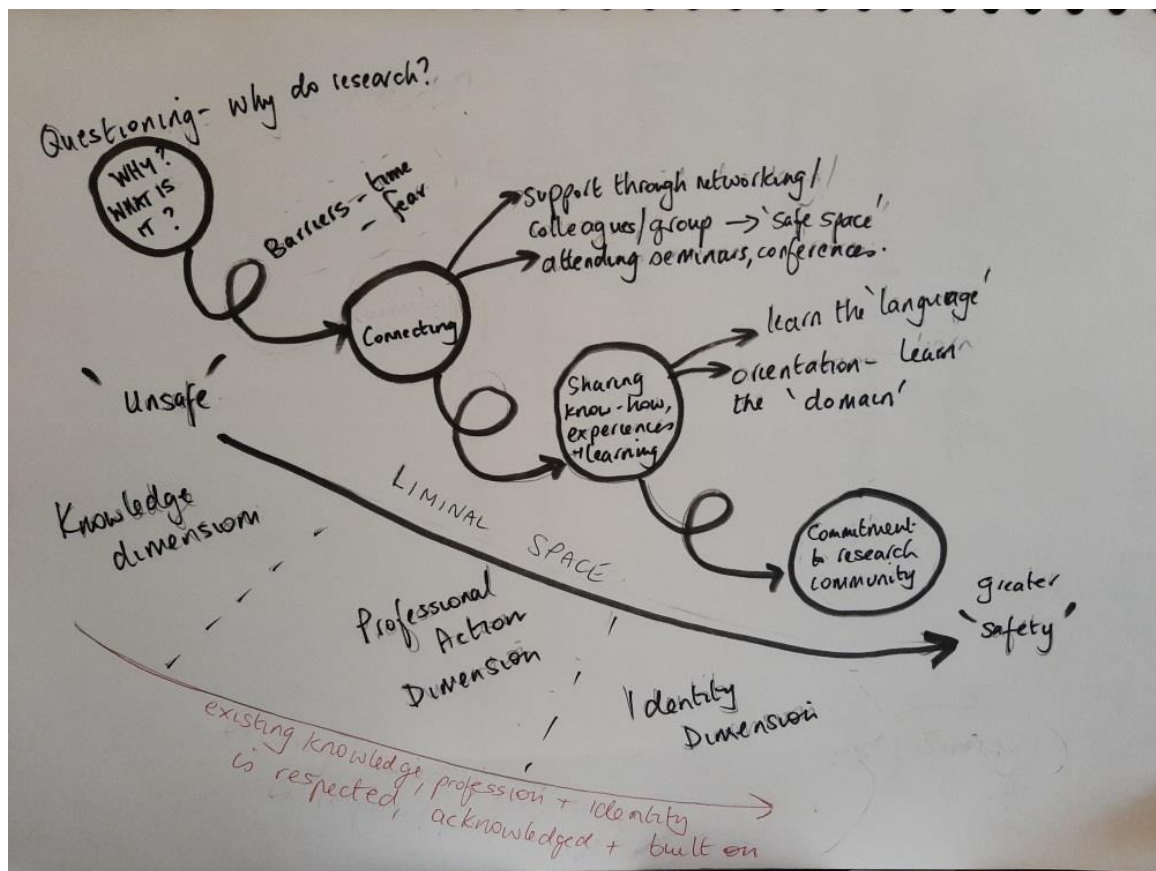


Figure 16 : entering the liminal space

Cook discussed the 'messiness' of research (talking in her case in relation to action research), and the 'interface between the known and the nearly known'.<sup>222</sup> She challenges the idea that 'proper' researchers follow a linear path, codifying, rationalising. Cook sees that this can create feelings of self-doubt in novice researchers. As explored below, my dialogic interviews touched on this idea that, as practitioners entering this new arena as researchers, there was a gap in our knowledge, and our feeling that the attributes and knowledge required for competence in the new role remained hidden from us.

<sup>222</sup> Tina Cook, "The purpose of mess in action research: building rigour through a messy turn," *Educational action research* 17, no. 2 (2009): 1, <https://doi.org/10.1080/09650790902914241>.

#### 7.4 “I’m not a real academic”<sup>223</sup>

This echoes interviews with two clinicians, one of whom comments ‘*we are aiming to be research active- if somebody could tell us how the hell to do it!*’ (Dialogic Interview 1)

They talk about drawing on long past experiences, to support them when starting to research, such as research activities within their original degree. The assumption that teaching staff come through the route of being a PhD researcher is misplaced, particularly in terms of the majority of those recruited to clinical teaching, who are expected to learn research skills on the job- or through osmosis. For many of those teaching in the Student Law Office, a key step was recognising that activities within teaching could also support or constitute research. However, as Visser-Wijnveen et al. note “One of the main problems in the discussion about the research-teaching nexus is that the term is used for many different kinds of ‘activities’ in the university and that many different words are used for the same activity”.<sup>224</sup>

According to Boyer, ‘Research and publication have become the primary means by which most professors achieve academic status, yet many academics are drawn to the profession precisely because of their love for teaching or for service’.<sup>225</sup>

Boyer argued for a broader concept of ‘scholarship’ that values the various roles of universities and faculty, and suggests four areas of scholarship:

- the scholarship of discovery research.
- the scholarship of integration, which includes the writing of textbooks;
- the scholarship of service, which includes the practical application of knowledge; and

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<sup>223</sup> Ninetta Santoro and Suzanne L. Snead, “‘I’m not a real academic’: a career from industry to academe,” *Journal of Further and Higher Education* 37, no. 3 (2013), <https://doi.org/10.1080/0309877X.2011.645457>.

<sup>224</sup> Gerda J. Visser-Wijnveen et al., “The ideal research-teaching nexus in the eyes of academics: building profiles,” *Higher Education Research & Development* 29, no. 2 (2010): 195, <https://doi.org/10.1080/07294360903532016>.

<sup>225</sup> Boyer E L, *Scholarship Reconsidered: Priorities of the Professoriate* (Princeton: Carnegie Foundation for the Advancement of Teaching, 1990).

- the scholarship of teaching (later refined to become teaching *and* learning).

The latter was the most relevant for those teaching in clinic, with its innovative approach. Certainly my published work coheres around this part of my role.

Rosewell and Ashwins recent phenomenological work on academics' own perceptions of what it means to be an academic touched on the researcher role as forming part of the identity of some of the participants – 'it's just who I am'. They examined the role of research as providing recognition and making a contribution. For the law clinic supervisors at Northumbria, their identity was often centred on their practical professional knowledge and excellence in innovative teaching.

#### 7.5 How did the clinical team respond to the 'publish or perish' imperative.

According to Quigley, professional behaviour can be defined in terms of four essential attributes:

1. A high degree of generalised and systematic knowledge;
2. Primary orientation to the community interest rather than to individual self interest
3. A high degree of self-control of behaviour through codes of ethics internalised in the process of work socialisation and through voluntary associations organised and operated by the work specialists themselves; and
4. A system of rewards (monetary and honorary) that is primarily a set of symbols of work achievement and thus ends in themselves, not means to some end of individual self-interest.

This accords with the work of Wilson and Strevens quoting data from the Jubilee Centre on virtues for the ideal lawyer of 'judgement honesty perseverance fairness and perspective'.<sup>226</sup>

That work explores well-being in law academics, and conjectures that these very qualities may lead law academics in particular to struggle with well-being if, for example, the ways in which their institutions operate are not perceived as fair. Initially, the imposition of what was seen as further demands on an already multi-faceted role was perceived by many as unfair.

What was key to shifting the focus of clinical supervisors from their practice and towards research was transposing some if not all of these attributes into the experience of being an active researcher. So, the creation of a community of practice relating to research activity, and one where there was a feeling of being connected, and supported, was vital. Professional socialisation of clinical supervisors, the nature of the clinical work, contributed to characteristics of resilience, ability to deal with risk and uncertainty, and a sense of belonging and familiarity with ways of working in groups or teams as well as alone. These tendencies (perhaps not a strong enough to be called attributes) served the group well. Barriers arising from the nature of the clinical work were lack of time, in part due to the constant nature of casework as well as the all-consuming nature of perfecting student drafts to provide advice to clients, a lack of insight into the unique and rich nature of the clinical work as a seam of research and lack of confidence within this new sphere. In this sense, their clinical work requires translation from what might be a familiar practice into something which can be viewed through a theoretical framework – and seen in a new way.

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<sup>226</sup> J. Clare Wilson and Caroline Strevens, "Perceptions of psychological well-being in UK law academics," *The Law Teacher* 52, no. 3 (2018): 345, <https://doi.org/10.1080/03069400.2018.1468004>.

## 7.6 – Can we provide clinic for all – and fulfil the research imperative?

In Chapter 1.5, when outlining my epistemological approach, and the bounds of this work, I posed the question; are the expectations of the academic role and the reality of teaching in the clinic at odds? My experience suggests that there is a risk that they *are* at odds, unless some element of synergy is found between the clinical supervision role and the research role. Trowler<sup>227</sup> refers to ‘the Robbins trap’ which created the ‘paradox presented by a simultaneous and incompatible commitment to higher education expansion and a model of higher education founded on elitist principles. Although written in 1997, Trowler’s work on the role of the academic in policy implementation has echoes of current trends within University law schools, including moves towards expanding clinic to make it available for all students. Is a similar paradox likely to be created, if there is a failure to recognise the key values which create excellence in the clinical experience?

If one of the challenges for the future is likely to be, how, or whether to, upscale the authentic clinical experience, then we need to consider what the key components are in the clinical experience which make it so valuable to students, and how those teaching in clinic can be provided with a suitable environment to provide this valuable experience. Key to this is the relationship between supervisor and student – and this is something that needs to be nurtured by those managing and overseeing the clinic, as I did. At the same time, many clinical supervisors are shifting their gaze to see their clinical work through a research lens but require

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<sup>227</sup> Paul Trowler, "Beyond the Robbins trap: Reconceptualising academic responses to change in higher education (or ... quiet flows the don?)," *Studies in Higher Education* 22, no. 3 (1997), <https://doi.org/10.1080/03075079712331380916>.

the time and space to make that journey through the 'liminal space'. They need to bridge that gap while continuing to draw on a wealth of on-going clinic experience.

Therefore key drivers to my work as Director were ;

- Providing a structure where clinicians can have confidence that their professional standards are being protected, including systems which ensure they can comply with professional obligations.
- allowing sufficient time to deliver the casework through clinic teaching, and the systems which ensure clinicians are not put in jeopardy particularly in respect of their professional reputation.
- More recently, supporting clinic staff to engage with the research agenda by enabling them to request research time within the workload model, and sabbaticals to work on research activities.

This latter shift created an inevitable pressure point. The adoption by the law school of a more formalised workload model, whereby attempts were made to quantify the time allocated/allowed for various activities became a tool used by management, but also academic staff in seeking a balance between teaching, administrative tasks and research activities.<sup>228</sup> One way for clinical supervisors to seek to reduce not only the professional risks of supervising students carrying out casework, but also to save time for research is to simplify the legal work. This can be by selecting cases on a risk basis, by limiting the retainer (perhaps to advice only as opposed to a full representation service) or by incorporating more activities based on mock scenarios and less live work. As Director of the clinic, the risk of eroding the

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<sup>228</sup> Andrew T. Graham, "Academic staff performance and workload in higher education in the UK: the conceptual dichotomy," *Journal of further and higher education* 39, no. 5 (2015): 669, <https://doi.org/10.1080/0309877X.2014.971110>.



student experience is a real one. Both student and client expectations need to be managed. In terms of managing clinical supervisors, where career progression is (or is perceived as being) dependent on research profile, those academics who secure significant research time allocation can be viewed by those shouldering the burden of teaching and administrative tasks as doing so at the expense of others. Graham describes the 'twin strands of teaching and research linked in such a way that tension exists between the two'.<sup>229</sup> He sees it as 'incumbent on managers to balance this tension as part of the workload planning mechanism because these tensions can affect performance in a negative way if not managed carefully'.

<sup>230</sup> The challenge of ensuring fairness across the board is a real one throughout the university, but I would argue it is an even more acute one where the success of the enterprise, in this case the law clinic as a teaching method, rests on working as a close-knit team where trust, commitment to clients and professionalism are paramount. However, Graham's review of academic workload systems finds performativity being viewed by some authors as 'a cultural issue that managers need to address because the old order of collegiality and trust was risky'.

<sup>231</sup> My own experience was that both systems – the use of a prescriptive workload model, or one based on collegiality and trust – could be subverted to benefit some academics over others. <sup>232</sup> The real issue was the potential for privileging some activities (such as research activity) over others (such as time spent on clinical work), without also quantifying what must be lost in a process where there is a finite resource – that of time.

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<sup>229</sup> Graham, "Academic staff performance and workload in higher education in the UK: the conceptual dichotomy," 675.

<sup>230</sup> Graham, "Academic staff performance and workload in higher education in the UK: the conceptual dichotomy," 675.

<sup>231</sup> Graham, "Academic staff performance and workload in higher education in the UK: the conceptual dichotomy," 671.

<sup>232</sup> See for example Lucinda Barrett and Peter Barrett, "Women and academic workloads: career slow lane or Cul-de-Sac?," *Higher Education* 61, no. 2 (2011/02/01 2011), <https://doi.org/10.1007/s10734-010-9329-3>, <https://doi.org/10.1007/s10734-010-9329-3>.

## Conclusion

Are university law clinics at the heart of a perfect storm? For the post 1992 universities, who seized the opportunity to develop law clinics, the close relationship between student and supervisor echoed Humboldt's vision of the university as 'a community of scholars and students' engaged in a common task. The old polytechnics were well placed to focus on clinical teaching. But with massification, and the shift towards students as customers, as endorsed by the Dearing report of 1997 has come an increase in the number of students. Clinics are being asked to offer the 'transformative' experience to as many students as possible. Excellent student experience in law clinics has led to excellent NSS ratings – critically important to university rankings, and reluctance to push back on this demand for 'clinic for all', because of the marketisation of the university experience. How far the impact of COVID will slow the expansion of university law clinic live client experience for students is unknown at this stage, but my experience of law clinic supervisors is that they are supremely flexible, used to dealing with risks and the unexpected, as well as creative in their teaching and it seems likely that, with some adaptations and precautions, a way will be found to move forward with clinic, whether it be through the use of policy clinics, or 'virtual' clinic, at least for the time being.<sup>233</sup>

I have already examined Bourdieu's ideas of 'habitus' in my work on student employability and the value of clinical experience but can now also see how those theories have relevance for the community of practice of clinical supervisors, and the ways in which clinic supervisors can struggle to adapt to the changing landscape of academic practice.

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<sup>233</sup> Francine Ryan, "A virtual law clinic: a realist evaluation of what works for whom, why, how and in what circumstances?," *The Law Teacher* 54, no. 2 (2020/04/02 2020), <https://doi.org/10.1080/03069400.2019.1651550>, <https://doi.org/10.1080/03069400.2019.1651550>.

While participating in a seminar on visual methods, I was asked to create a visual representation of my doctorate using plasticine. I created a representation of my team of clinical supervisors as entering the circle representing the clinic/Student Law Office as one colour, and gradually changing colour, before the majority exited the 'circle'. This reflected the conundrum that clinical teaching can create, and one which I became drawn into myself, which is that many staff transitioned to become research active academics and either perceived that as not compatible with clinical teaching due to the nature of the role including workload, or in relation to their changing identity as a researcher. The demands of clinical teaching come on top of other pressures relevant particularly to post 1992 universities. Time allocated for teaching tends to be higher than in research intensive universities, and research funding less easily available.<sup>234</sup>

But my reflections have led me to see that the 'habitus' of clinical practice is complex, and there is much to learn from observing and capturing the quality of this teaching, and the reasons why some stay and others leave. There can be a dual pressure to leave the clinic. Practitioners may be drawn to a career in academia perceiving it to offer 'autonomy, freedom of expression and its focus on reflection, scholarship and intellectual debate'. Most practitioners join the law school as active, experienced solicitors/barristers, but in order to succeed in the University environment, must make a transition to become educator, and more recently, a further transition to assimilate research skills and become research active. Others fall at the first hurdle. They may have overplayed their true level of current experience of dealing with a caseload of live client cases at their interview for this role, and faced with

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<sup>234</sup> Nick Pilcher et al., "Problematising the 'Career Academic' in UK construction and engineering education: does the system want what the system gets?," *European Journal of Engineering Education* 42, no. 6 (2017): 1479, <https://doi.org/10.1080/03043797.2017.1306487>.

the reality, would request other non-clinical teaching from the start, instead of teaching in the law clinic, and leave practice behind. After all, these are legal cases, involving real clients, bringing significant amounts of responsibility. In addition, the full casework model (as opposed to advice only) creates a far greater level of risk and responsibility of a highly temporal nature, in that for clinical supervisors, and consequently the Clinical Director, the responsibility for cases and student's actions is an on-going one, and the input required is unpredictable. For those who do start as supervisors in the clinic, they can work successfully for years until they begin to feel they have moved too far away from their real life professional legal experience and skills base to continue with live client work – this is no longer within their 'comfort zone'. Whilst law clinic supervisors may take some delight in no longer having to be concerned about chargeable hours and billing, there is no scope for leaving behind the demands of practice competence. In many respects, the demands of clinic run counter to the demands of the university to be research active – unless the teaching and learning can be successfully harnessed to fulfil the University research demands.

As outlined above, I sought to make research relevant and provide support within my team of supervisors. An obvious way forward was to focus research on the clinic work. I would characterise my/our research initially as descriptive, in that we would explain and describe various projects we had worked on in the law clinic, but this work was lacking any underpinning theory pedagogy or framework. It took some time for us to understand the way in which these experiences could be 'framed'. Our understanding of research (outside the examination of black letter law topics) was that of quantitative research and we had no understanding of social science research methods, of the range of qualitative approaches we could use which could carry a double purpose, in framing research while providing practical input into our work as teachers. An example of this was the use of appreciative enquiry. The

work of Sage-Jacobsen and Leiman <sup>235</sup> looking at the relationships between supervisors and reflecting on their experiences and practice is a somewhat painful example. The type of meeting which is used in this paper is one which I held two or three times a year, for at least six years. This could have formed the basis of research into supervisor experiences, had I been familiar with research methods. Fortunately, there has been significant progress. Rosewell and Ashwin's recent phenomenological work<sup>236</sup> on academics own perceptions of what it means to be an academic touched on the researcher role as forming part of the identity of some of the participants; 'it's just who I am'. They examined the role of research as providing recognition and making a contribution. For the law clinic supervisors at Northumbria Student Law Office, their identity was often centred on their practical professional knowledge and excellence in innovative teaching. However, viewing the publication output of the LEAPS group as capturing the research outputs of the clinical staff, a transformation has taken place, in the incorporation of research into their portfolio of skills. This transformation has to some extent been facilitated by the ability of clinical supervisors to shift their gaze from the community of practice which is the law clinic to one focussed around a research community founded on collegiality and trust, where their experiences as clinical supervisors are valued.

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<sup>235</sup> Sage-Jacobson and Leiman, "Identifying teaching and learning opportunities within professional relationships between clinic and supervisors.(Australia)," 7.

<sup>236</sup> K. Rosewell and P. Ashwin, "Academics' perceptions of what it means to be an academic," *Studies in Higher Education* 44, no. 12 (2018), <https://doi.org/10.1080/03075079.2018.1499717>.

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## Appendices

Appendix 1: List of published/unpublished work

Appendix 2: LEAPS research group publications

Appendix 3: Ethical Issues Forms

### Appendix 1: List of published/unpublished work – Carol Boothby

#### Refereed Conference papers

1. 'Impact of clinical education on employability' , Exploring Freedom and Control in global higher education SRHE International Conference on Research into Higher Education December 2016 (co- presented with Jill Alexander)
2. 'To Him that Hath, More Shall Be Given: the ethical implications of selection for clinical programmes'. Paper, International Legal Ethics Conference, New York, (2016). Hall, J., Hall, E., Sylvester, C. and Boothby, C.
3. 'Proof beyond reasonable doubt? Using large data sets to explore the impact of clinical education'. Seminar, IJCLE/ACCLE Conference, Toronto, (2016) Hall, E., Sylvester, C. and Boothby, C.
4. 'Future-proofing law clinic – aligning the law clinic curriculum /experience with employer expectations to enhance employability' , Association of Law Teachers annual conference Newcastle 2016 , (co-presented with Jill Alexander )
5. 'Pigs are not fattened by being weighed' – so why assess clinic- and can we defend our methods? IJCLE Turkey July 2015
6. 'From Rote to Realism: The role of clinical legal education in providing best practice in assessment and feedback' Association of Law Teachers 50th Annual Conference March 2015 (co-presented with Elaine Campbell)
7. 'Why we do Clinic...'ENCLE Spring Workshop, Northumbria University, 15-16th April 2015 with Professor Kevin Kerrigan
8. Northumbria University Research Conference 2014, poster on Legal writing (as part of the Legal Education and Professional Skills (LEAPS) Research Group)
9. 'Getting the fish to see the water: An investigation into how students transfer writing skills developed in earlier academic or practical settings for use in clinic' IJCLE conference paper 2013, Brisbane, co-presented with Cath Sylvester
10. 'Reflecting on the role of the clinical supervisor – how we see ourselves, how others see us, and how we meet the expectations of our different stakeholders' IJCLE conference paper 2013, Brisbane, co-presented with Marg Castles (Adelaide),
11. 'Teaching in an authentic learning environment- Which Hat Shall I Wear Today? The multifaceted persona of the clinical supervisor' Three Rivers conference poster, 2013, with Marg Castles (Adelaide)
12. 'What is the role of the legal clinic, and should it be influenced by the desire to achieve social justice? 'IJCLE/Global Alliance for Justice Education conference paper 2011 Valencia, co-presented with Sarah Morse,
13. 'In the looking glass – reflection on past experience as a key to the future- How reflection of practical experience can support students in becoming lifelong learners.' Learning in Law Conference UK Centre for Clinical Legal Education, University of Warwick, January 2010
14. 'e clinics- Pushing the Boundaries' IJCLE conference paper 2009, Perth – co-presented with Paul McKeown,
15. 'Why Lawyers are like Rhinoceroses' Association of Law Teachers conference, Amsterdam 2009 – co-presented with Caroline Foster
16. 'Bridging the Gap with External Organisations: A role for Clinical Legal Education' Association of Law Teachers conference, Amsterdam 2009 – co-presented with Paul McKeown
17. 'Reflection and Reflective Practice' North East Teaching and Learning conference 2009- poster
18. 'Herding Cats: clinical assessment of Bar students' Society of Legal Scholars conference 2005 —co-presented with Philip Plowden
19. 'Duty Bound: Court Possession Schemes and clinical education' IJCLE conference 2004

#### **Non-refereed conference proceedings**



20. Quality & Supervision - Clinical Legal Education Conference: Joint seminar  
LSBU/Northumbria Law School 11 November 2016  
a) Panel            b) fishbowl        c) students
21. Northumbria Teaching Quality Enhancement conference 2015 – poster :’The Student Conference’
22. ‘Building on Our Success’ Support Northumbria Conference 2011
23. ‘Business Awareness for Lawyers’ Northumbria University research conference ‘People Society and Business’ January 2010–co-presented with Kevin Kerrigan
24. ‘Improving Feedback to Students’ CLEO conference 2009- co-presented with Caroline Foster,

### **Refereed Journal Publications**

25. a. ‘Framing Clinical Legal Education at Northumbria Law School: Challenges Old and New’ (Co-authored with Jill Alexander) German Journal of Legal Education (forthcoming)  
b. ‘Stakeholder perceptions of Clinical Legal Education within an employability context.’ Alexander, Jill, & Carol Boothby. *International Journal of Clinical Legal Education* [Online], 25.3 (2018): 53-84. Web. 2 Jul. 2020
26. ‘University Law Clinics as Alternative Business Structures: More Questions than Answers?’ (Co-authored with E Campbell) - (2016) *The Law Teacher*, 50 (1). pp. 132-137. ISSN 0306-9400.
27. ‘Pigs are not fattened by being weighed’ – so why assess clinic- and can we defend our methods? *International Journal of Clinical Legal Education*, [S.l.], v. 23, n. 1, p. 137-155, Jan. 2016
28. ‘Showing the Fish the Water: A n investigation into students’ perceptions of learning writing skills in academic modules and in a final year real client legal clinic module’ (co-authored with C Sylvester) (2015) *The Law Teacher* 1
29. ‘Duty Bound? Court Possession Schemes and Clinical Education’, *International Journal of Clinical Legal Education*, August 2005

### **Book Chapters**

30. ‘Legal writing’, in Kerrigan and Murray (eds) , *A Student guide to Clinical Legal Education and Pro Bono* (Palgrave Macmillan 2011)
31. ‘Which Hat Shall I Wear Today? Exploring the Professional and Ethical Implications of Law Clinic Supervision’ in Caroline Strevens and Rachael Field (eds), *International and Comparative Perspectives on Legal Professional Identity: Well-Being Knowledge, Skills and Attitudes* , (Taylor and Francis forthcoming)

### **Workshops and Clinic consultancy**

32.
  - a) Birmingham City University Law School, invitation to provide consultancy support for on-site law clinic. (2019 )
  - b) ‘Dialling up the Reality’ Northumbria 6 June 2016
  - c) Legal Education workshop , Manchester 2016
  - d) Problematising Assessment workshop, Northumbria 2015
  - e) HEA funded seminar Running a legal clinic; facing the challengers and sharing good practice, Northumbria 31 July 2013

- f) Uganda CLIC project visit (2012/2014) following a successful funding bid
- g) Zagreb University- 'Promoting Effective Clinical Legal Education' (2012) - funded by British Embassy
- h) Czech Republic Pro Bono Alliance (2012 and 2014)
- i) Singapore UniSIM (2013)
- j) University of Glamorgan/Staffordshire University – visit/workshop Northumbria (2013)
- k) University of Wolverhampton visit/workshop Northumbria (2013)
- l) Teesside University visit/workshop Northumbria (2012)
- m) University of Adelaide visit/workshop Northumbria (Oct 2012)
- n) CUNY University/NYU/Columbia, New York (2011) following a successful HEIF bid

## Consultation responses

- 33. SRA consultation – 'Changing assessment for qualifying as a solicitor - Solicitors Qualifying Examination' – January 2017 – responses on behalf of both CLEO (Clinical Legal Education Organisation) and also Northumbria's LEAPS research group.
- 34. **Focus Groups** with students a) assessment (with Chris Simmonds) b) employability (with Jill Alexander) c) legal writing (with Cath Sylvester)

## 35. Contributions to other published works/reports via interview;

Donnelly, L. (2015). *Clinical Legal Education in Ireland: Progress and Potential*. Retrieved from Galway: Ireland: [https://app.pelorous.com/media\\_manager/public/138/Clinical-Legal-Education-Report.pdf](https://app.pelorous.com/media_manager/public/138/Clinical-Legal-Education-Report.pdf) p34

Kemp, V, Munk, T. and Gower, S. (2016) Clinical Legal Education and Experiential Learning: Looking to the Future. <http://hummedia.manchester.ac.uk/schools/law/main/news/Clinical-Legal-Education-Final-Report28.09.2016.pdf> p.22

Bleasdale –Hill L The Experience of Establishing and Maintaining Pro bono Projects within an Educational Setting: A Narrative <http://eprints.whiterose.ac.uk/rt4eprints/leeds/file/420059/Pro-Bono-Narrative-Bleasdale-Hill.pdf>

## 36. Other academic awards

- a) Masters in Academic Practice
- b) Principal Fellow of the Higher Education Academy

## Appendix 2: LEAPS publication record

2013-4

- 1. Lofthouse, Rachel and **Hall, Elaine** (2014) Developing practices in teachers' professional dialogue in England; using Coaching Dimensions as an epistemic tool. *Professional Development in Education*, 40 (5). pp. 758-778
- 2. **Sandford-Couch, Clare** (2013) Challenging the primacy of text: the role of the visual in legal education. In: *The Moral Imagination and the Legal Life: Beyond Text in legal Education*. Emerging Legal Education, 2 . Ashgate, Farnham

2015



1. **Ashford, Chris**, Duncan, Nigel and Guth, Jessica (2015) Perspectives on Legal Education: Contemporary Responses to the Lord Upjohn Lectures. Taylor & Francis. ISBN 9781138812581
2. **Campbell, E.** (2015) A dangerous method? Defending the rise of business law clinics in the UK. *The Law Teacher* 49, 2, 165-75  
<http://www.tandfonline.com/doi/pdf/10.1080/03069400.2015.1004254>
3. **Campbell, E.** (2015) Students as facilitators: an evaluation of student-led group work *Practitioner Research in Higher Education*, 9, 1, 52-58  
<http://194.81.189.19/ojs/index.php/prhe/article/viewFile/221/334>
4. **Campbell, E.** (2015) Transferring Power: a reflective exploration of authentic student-centred small group work in clinical legal education *IJCLE* 22, 2, 181-212  
<http://journals.northumbria.ac.uk/index.php/ijcle/article/view/428>
5. **Campbell, Elaine and Murray, Victoria** (2015) Mind the Gap: Clinic and the Access to Justice Dilemma. *International Journal of Legal and Social Studies*, 2 (3). pp. 94-106. ISSN 2394-1936
6. **Clough, J. & Shorter, G.W.** (2015) Evaluating the effectiveness of problem-based learning as a method of engaging year one law students, *The Law Teacher*, published online July 2015  
<http://www.tandfonline.com/doi/pdf/10.1080/03069400.2015.1011926>
7. **Gibby Caroline** and Graeme Broadbent (2015) Sourcing accurate and individual careers advice – challenges for law students and advisers. *The Law Teacher*, 49, 3, 398-406. DOI:10.1080/03069400.2015.1094200
8. **Gleason, Victoria and Campbell, Elaine** (2015) Cultivating 21st century law graduates through creativity in the curriculum. *Journal of Commonwealth Law and Legal Education*, 10 (1). pp. 4-20. ISSN 1476-0401
9. **McKeown, P. & Morse, S.** (2015) Litigants in person: is there a role for higher education? *The Law Teacher*, 49:1, 122-129  
<http://www.tandfonline.com/doi/pdf/10.1080/03069400.2015.1002222>
10. **McKeown, P.** (2015) Law student attitudes towards pro bono and voluntary work: The experience at Northumbria University. *International Journal of Clinical Legal Education*, 22 (1). pp. 6-46 <http://dx.doi.org/10.19164/ijcle.v22i1.407>
11. **McKeown, P. and Dunn R.** (2015) The European Network of Clinical Legal Education: The Spring Workshop 2015. *International Journal of Clinical Legal Education*, 22 (3). pp. 312-333  
<http://dx.doi.org/10.19164/ijcle.v22i3.473>
12. **Mkwebu, Tribe** (2015) A Systematic Review of Literature on Clinical Legal Education: A Tool for Researchers in Responding to an Explosion of Clinical Scholarship *International Journal of Clinical Legal Education*, 22 (3) pp 238-274 <http://dx.doi.org/10.19164/ijcle.v22i3.415>
13. **Sandford-Couch, Clare and Bainbridge, Jonathan** (2015) Educating towards ethical lawyers: a progress report, *The Law Teacher*, 49:3, 336-352, DOI:10.1080/03069400.2015.1016727
14. **Sylvester, Cath** (2015) Measuring competence in legal education: a view from the bridge. *The Law Teacher*. pp. 1-15. ISSN 0306-9400
15. **Sylvester, Cath** (2015) More questions than answers? A review of the effectiveness of inquiry based learning in higher education. *The Journal of Commonwealth Law and Legal Education*, 10 (1). pp. 21-29. ISSN 1476-0401

2016

1. **Ashford, Chris** (2016) Response: The needs of the legal profession and the liberal law school: (Re)negotiating boundaries. In: *Perspectives on Legal Education: Contemporary Responses to the Lord Upjohn Lectures*. Taylor & Francis, pp. 177-187.
2. **Ashford, Chris** and Guth, Jessica (2016) *The Legal Academic's Handbook*. Palgrave Macmillan. ISBN 9781137434289
3. **Boothby, Carol** (2016) 'Pigs are not fattened by being weighed' – so why assess clinic- and can we defend our methods? *International Journal of Clinical Legal Education*, 23 (1). pp. 137-155. ISSN 1467-1069 <http://dx.doi.org/10.19164/ijcle.v23i1.493>

4. **Campbell, Elaine** (2016) Exploring Autoethnography as a Method and Methodology in Legal Education Research. *Asian Journal of Legal Education*, 3 (1). pp. 95-105. ISSN 2322-0058
5. **Campbell, Elaine** (2016) Recognizing the Social and Economic Value of Transactional Law Clinics: A View from the United Kingdom. *Journal of Legal Education*, 65 (3). pp. 580-596.
6. **Campbell, Elaine and Boothby, Carol** (2016) University law clinics as alternative business structures: more questions than answers? *The Law Teacher*, 50 (1). pp. 132-137
7. **Dunn, R.** (2016) Taxonomy of Clinics: The Realities and Risks of all Forms of Clinical Legal Education *Asian Journal of Legal Education*, 3 (2) pp. 174 - 187  
<http://journals.sagepub.com/doi/abs/10.1177/2322005816640339>
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9. **Griffiths, Elisabeth**, Chantal Davies, Nuno Ferreira, Anne Morris, and Morris, Debra. "The 'reasonable Accommodation' of Religion: Is This a Better Way of Advancing Equality in Cases of Religious Discrimination?" *International Journal of Discrimination and the Law* 16.2-3 (2016): 161-76.
10. **Hall, E** and Wall, K (2016) The Abductive Leap: eliding visual and participatory in research design in Pini, B and Moss, J (Eds.) *Visual Educational Research: Critical Perspectives* London: Palgrave ISBN 978-1-137-44734-0
11. **Hall, E.** (2016) The tenacity of learning styles: a response to Lodge, Hansen and Cottrell *Learning: Research and Practice* DOI:10.1080/23735082.2016.1139856
12. **McKeown, Paul and Morse, Sarah** (2016) Further Developing Street Law. In: *The Legal Academic's Handbook*. Palgrave Macmillan, pp. 84-86. ISBN 9781137434289
13. **Mkwebu, Tribe** (2016) Unpacking Clinical Scholarship: Why Clinics Start and How They Last. *Asian Journal of Legal Education*. ISSN 2322-0058 (In Press)
14. **Murray, Victoria** (2016) Developing Clinic. In: **Ashford, C.** and Guth J. (Eds) *The Legal Academic's Handbook*. Palgrave Macmillan. ISBN 9781137434289
15. **Sylvester, Cath** (2016) Through a glass darkly: Assessment of a real client, compulsory clinic in an undergraduate law programme *International Journal of Clinical Legal Education*, 23 (1). pp. 32-47. <http://dx.doi.org/10.19164/ijcle.v23i1.489>
16. Wall, K and **Hall, E.** (2016) Teachers as metacognitive role models. *European Journal of Teacher Education* 39, 4, 403-18

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1. **Boothby C. & Sylvester, C.** (2015): Getting the fish to see the water: an investigation into students' perceptions of learning writing skills in academic modules and in a final year real client legal clinic module, *The Law Teacher* 51, 2, 123-37
2. **Campbell, Elaine** (2017) "Apparently Being a Self-Obsessed C\*\*t Is Now Academically Lauded": Experiencing Twitter Trolling of Autoethnographers. *Forum: Qualitative Social Research*, 18 (3). p. 16. ISSN 1438-5627
3. **Campbell, Elaine** (2017) Should I Share My Journal Entry With You? A Critical Exploration of Relational Ethics in Autoethnography. *Departures in Critical Qualitative Research*, 6 (4). pp. 4-22. ISSN 2333-9489
4. **Gemma Louise Davies & James Welsh** (2017) Advocacy 20 years on from Hampel: is it time we revisited the postgraduate teaching of advocacy?, *The Law Teacher*, 51:4,
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2018

1. **Alexander, J. and Boothby, C.** (2018) Framing Clinical Legal Education at Northumbria Law School: Challenges Old and New *German Journal of Legal Education Vol 5*
2. **Alexander, J. and Boothby, C.** (2018) Stakeholder perceptions of Clinical Legal Education within an employability context. *International Journal of Clinical Legal Education* 25, 3, 53-84
3. Arthur, R and **Roper, V.** (2018) Criminal liability for child deaths in custody and the Corporate Manslaughter and Corporate Homicide Act 2007 *Child and Family Law Quarterly* 30, 2, 121-44
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6. **Campbell, Elaine** (2018) Taking Care of Business: Challenging the Traditional Conceptualization of Social Justice in Clinical Legal Education. In: *Social Justice and Legal Education*. Cambridge Scholars, pp. 168-84. ISBN 978-1-5275-0646-6
7. **Davies, G.** and Woo, MK (2018) Navigating troubled seas: the future of the law school in the United Kingdom and the United States *Journal of International and Comparative Law Special Issue Contemporary Issues in Legal Education*
8. **Hall, E.** (2018) Glass Houses: how might we decide on a 'good enough' assessment to become a solicitor? *The Law Teacher* 52, 4, 453-66
9. **Hall, E.** (2018) Grasping the nettle of doctorateness: a framework for thinking critically about curriculum design *Studies in Continuing Education Special Issue*
10. **Hall, E. and Sylvester C.** (2018) Clinic as the crucible: where theory is considered a practice and practice is theorised in Thomas, L. (Ed) *Re-imagining Clinical Legal Education* Oxford, Hart
11. **Hall, J.** (2018) An integrated law curriculum: balancing learning experiences to achieve a range of learning outcomes *Journal of International and Comparative Law Special Issue Contemporary Issues in Legal Education*
12. **McKeown, P. and Hall, E** (2018) If we could instil social justice values through clinical education, should we? *Journal of International and Comparative Law Special Issue Contemporary Issues in Legal Education*
13. **McKeown, Paul** (2018) Can Social Justice Values be Taught Through Clinical Legal Education? In: *Social Justice and Legal Education*. Cambridge Scholars, pp. 84-110. ISBN 978-1-5275-0646-6

14. Rachel Nir, Tina McKee, Rachel Anne Nir, **Jill Alexander, Elisabeth Griffiths** and Tamara Hervey (2018) "The Fairness Project": doing what we can, where we are *Journal of International and Comparative Law Special Issue Contemporary Issues in Legal Education*
15. **Rachel Dunn, Victoria Roper & Vinny Kennedy** (2018) Clinical legal education as qualifying work experience for solicitors, *The Law Teacher*, 52:4, 439-452,
16. **Speed, A.** (2018). Making the case for international family law in the law school curriculum. *International Family Law*, (02 2018), 120-30.
17. **Sylvester, C.**, O'Boyle, R. and Hall, E. (2018) Data Wombling: what re-analysis of naturally occurring student data can tell us about courses, student performance and access to the legal profession *Journal of International and Comparative Law Special Issue Contemporary Issues in Legal Education*
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19. **Roper, V.** (2018) Blogs as a teaching tool and method of Public Legal Education: a case study *International Journal of Public Legal Education*, 2, 1, 46-70
20. **Roper, V.** (2018) The Corporate Manslaughter and Corporate Homicide Act 2007—A 10-Year Review *Journal of Criminal Law* 82, 1, 48-75

2019

1. **Bengtsson, L and Speed, A** (2019) A Case Study Approach: Legal Outreach Clinics at Northumbria University *International Journal of Clinical Legal Education* 26, 1, 179-215
2. **Bengtsson, Lyndsey.** "Age Stereotyping: A Legal and Fieldwork Analysis." *International Journal of Law and Management* 61.3/4 (2019): 485-504
3. Gabriel Brennan, Rory O'Boyle, **Jan Cookson & Mark Brewer** (2019) Paradigm shift: motivations for qualified legal professionals to undertake academic study, *The Law Teacher*, 53:1, 70-89
4. **Hall, E.** (2019) Narcissus in peril: weighing the risks of unthinking practice and excellent practice against the cognitive and emotional load of reflection. *The Law Teacher*, 53, 4, 399-400
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6. **Hall, E.**, and Wall, K. (2019) *Research Methods for Understanding Practitioner Learning*. London: Bloomsbury
7. **Jonny Hall** (2019) Building reflection into the clinic supervision experience: research methods for the reflective teacher, *The Law Teacher*, 53:4, 475-486
8. **Kennedy, V.** (2019) Pro bono legal work: the disconnect between saying you'll do it and doing it *International Journal of Clinical Legal Education*, 26, 3, 25-53
9. **Callum Thomson, Lyndsey Bengtsson & Tribe Mkwebu** (2019) The hall of mirrors: a teaching team talking about talking about reflection, *The Law Teacher*, 53:4, 513-523
10. **Richardson, K and Speed, A** (2019) Promoting Gender Justice within the Clinical Curriculum: Evaluating Student Participation in the 16 Days of Activism against Gender-Based Violence Campaign *International Journal of Clinical Legal Education* 26, 1, 87-131
11. **Richardson, Kayliegh, Ana Speed,** "Two Worlds Apart: A Comparative Analysis of the Effectiveness of Domestic Abuse Law and Policy in England and Wales and the Russian Federation." *The Journal of Criminal Law* 83.5 (2019): 320-51
12. **Richardson, Kayliegh Leanne, and Ana Kate Speed.** "Restrictions on Legal Aid in Family Law Cases in England and Wales: Creating a Necessary Barrier to Public Funding or Simply Increasing the Burden on the Family Courts?" *Journal of Social Welfare and Family Law* 41.2 (2019): 135-52.

13. **Roper, V.** (2019) Reflecting on Reflective Practices in Clinical Legal Education  
*International Journal of Clinical Legal Education* 26, 1, 216-36
14. **Roper, V.** (2019) Grenfell charge delays understandable, but where have all the corporate manslaughter prosecutions gone? *The Company Lawyer*, 40, 8, 265-7
15. Wall, K., Cassidy, C., Robinson, C., **Hall, E.**, Beaton, M., Kanyal, M. and Mitra, D. (2019) Look who's talking: Factors for considering the facilitation of very young children's voices  
*Journal of Early Childhood Research*, 17, 3, <https://doi.org/10.1177/1476718X19875767>

2020

1. **Speed, Ana.** "Academic Perspectives on Teaching International Family Law in Higher Education Institutions in England and Wales." *The Law Teacher* 54.1 (2020): 69-102
2. **Griffiths, Elisabeth.** "But you don't look disabled" - Invisible disabilities, disclosure and being an 'insider' in disability research and 'other' in the disability movement and academia. / *Ableism in Academia*. ed. / Jennifer Leigh; Nicole Brown. University College London, in press
3. Castles, Margaret, and **Boothby, Carol** . "Which Hat Shall I Wear Today? Exploring the Professional and Ethical Implications of Law Clinic Supervision ". Chap. 9 In *Educating for Well-Being in Law and Practice*, edited by Caroline Strevens and Rachael Field, 117-30. London: Routledge, 2020.

Forthcoming

Wall, K., Arnott, L. and **Hall, E.** (2020) Practitioner-enquiry: A Reflexive Research Method for Playful Pedagogy in Brasof, M. and Levitan, J. (Eds.) *Designing Space and Using Time That Considers the Power Dynamics and Relationship Between Youth and Adults* Teachers College Press


### Appendix 3: Ethical Issues Forms;

#### RESEARCH ORGANISATION INFORMED CONSENT FORM

**Faculty of Business and Law**  
**Staff Research and Consultancy**  
**Ethical Issues Form**

Staff Name:	Karol Boothby
Department:	LAW
Title of Research / Consultancy Project:	Exploring the role of clinic supervision
Please categorise your research as: <ul style="list-style-type: none"> <li>• Learning &amp; Pedagogical</li> <li>• Discipline based</li> <li>• Contribution to practice</li> <li>• A multiple of the above</li> </ul>	Learning and pedagogical
Start Date of Research / Consultancy project:	May 2016

	Comments
Brief description of the proposed research methods including, in particular, whether human subjects will be involved and how.	<p>Supervisors in five client law clinics will be asked for their views on their experience of supervising in a law clinic. Primary data collection will take place via interview which may take place in CCE building or at a location convenient to the interviewee, such as their own university. The interviews will be conducted by Carol Boothby, using the 'same but different' structure to initiate discussion (see example attached, Appendix 2) and will be audio recorded.</p> <p>After preliminary analysis by Carol Boothby, SLO supervisors at Northumbria will be invited to comment on the emerging findings and critically evaluate the evidence. This session will be recorded and transcribed. Colleagues will not be named in the transcriptions or in any subsequent work or publications.</p> <p>Other data such as literature reviews and written sources will be gathered on campus in CCE in researchers' offices, in the University library and some reading and written research may be done at home.</p> <p>This study tests the hypothesis that clinical supervision whilst clinical supervision is a highly individual activity, there may be common threads, reflections and experiences, analysis of which will help us to understand the demands on those involved in this teaching activity, and to examine any issues impacting on sustainability.</p>

How will informed consent of research participants be acquired?  (If appropriate attach draft informed consent form)	informed consent will be acquired by providing participants with two copies of an information sheet about the research (Appendix 1). Those participants who are willing to take part will be asked to sign the informed consent form (Appendix 1), retaining their own signed copy, before any data is collected. The forms will be distributed as soon as ethics is granted, allowing participants time to ask any questions they may have.
Will the research involve an organization(s)?	It will involve interviewing staff from other universities in addition to Northumbria.
How will research data be collected, securely stored and anonymity protected (where this is required)?	The interviews and supervisor comments will be recorded and transcribed. No participant's names will be used during the analysis or transcribing phase. No names will be taken and the study will remain anonymous. All names spoken during the recording will be removed during transcription. Images may be taken of any notes, diagrams or other visual artefacts produced by the group.  Once the analysis is completed a participant may request to see the data. As stated, any information identifying an individual will have been removed.  Electronic copies of the data (videos and any audio) will be stored securely on a password protected university computer, and/or iPad. Extracts of the data may be shared or viewed by the research team and, in addition to a PhD/Professional Doctorate thesis, other publications may be generated based on the data. All documentation will be made anonymous prior to use to maintain participant confidentiality.
How will data be destroyed after the end of the project? (Where data is not to be destroyed please give reasons)	The recording will be deleted from the original storage place (iPad/ data storage device) once it has been stored on a university computer. The saved audio or video recordings will be deleted from the university computer. They will be held, however, for a period of up to 5 years. Within this time individuals may request to see any data collected in this particular study. As stated above, names of individuals will not be used without their express permission.
Any other ethical issues anticipated? 	It is not anticipated that participants will wish to discuss client cases, but they will be given information and reminded before the start of the conference that no client names or information, that could identify a particular case, should be used. This is to protect client confidentiality. It is not envisaged that this should be a problem during this particular meeting, but it is something to be aware of.

Staff Signature (indicating that the research will be conducted in conformity with the above and agreeing that any significant change in the research project will be notified and a "Project Amendment Form" submitted.

Date: 16/5/16      Staff Signature: *Carol Smith*

Line Manager:

I confirm that I have read this form and I believe the proposed research will not breach University policies.

Date: 16/5/16      Signature: *[Signature]*



## Appendix 1

### Information for Participants

Carol Boothby is exploring supervision in clinic in her role as SLO Director, and as part of her Professional Doctorate. This project sets out to understand the role and experiences of clinical supervisors.

This document sets out the background to the study as a whole and provides detailed information of the study in which you are invited to participate. If there are any questions that are not answered here, please contact Carol for further information. Dr Elaine Hall is Carol's supervisor.

Carol Boothby  
Director SLO  
carol.boothby@northumbria.ac.uk

Elaine Hall  
Reader in Legal Education Research  
[Elaine.Hall@northumbria.ac.uk](mailto:Elaine.Hall@northumbria.ac.uk)

The purpose of collecting this data is to examine supervisors' views and perceptions of teaching in clinic. In particular, this study is looking to capture the lived experience of supervising in a 'live client' clinic.

Your contribution can provide insights into this particular kind of teaching. The data will be focused on your individual experience of supervising in clinic and this will help to capture the reality of this work. Your response to the interview data will help us to evaluate and contextualize the evidence.

#### **What being involved in the research will mean**

You will be asked to take part in an interview conducted by Carol Boothby. This is likely to last a maximum of one hour and will be audio recorded, and notes taken. Images may be taken of any notes, diagrams or other visual artefacts produced by the interviewee. The recordings of the interview will be transcribed. During the transcription all names or identifying details will be removed. Once this has happened, you will be able to access the transcription should you wish to do so. The audio recordings and transcriptions will be securely stored as described in the section on Confidentiality below.

Participation in this study means that you provide us with permission to use the transcribed data we collect in publications and presentations about this research. Your responses will be combined with those of other participants. Information about individuals will not be used in any published reports, without their express permission. Audio data will not be used in any public forum without separate discussion and consent.

Your participation in this study is voluntary. After signing this form you can withdraw from the study at any time and you will not be asked any questions as to why you no longer wish to take part. If you have withdrawn from the study you may rejoin at any time.

#### **Risks and Benefits of being in the study:**

The process of reflecting on the role of the clinical supervisor in the clinic you are involved in may prompt new perspectives and ideas which may be beneficial in the future. These new perspectives may also cause you to question your approaches and if this is a concern to you, you will have the opportunity to discuss this either with one of the project team or with a clinical supervisor from Northumbria. The outcomes of the study will improve understanding of the role of the clinical supervisor, so others may ultimately benefit from the knowledge obtained.

#### **Confidentiality:**

The records of this study will be kept confidential under the provisions of the Data Protection Act 1998. In any reports on this study, we will not include any information that will make it possible to identify any individual or group, and no names will be included in the analysis. If an individual can be identified by the nature of their role, specific consent to waive confidentiality will be agreed and all written material will be subject to their scrutiny before publication. This may include words that you have said.



Electronic copies of data, including the audio, will be stored securely within a password protected file on a university computer and will be backed up to Carol's password protected i pad. Extracts may be shared and viewed by the research team and publications will be generated based on the data. All documentation will be made anonymous prior to this to maintain participant confidentiality.

The recordings from the desk microphones or ipad will be deleted from their initial storage place within two weeks, as soon as they are transferred to the university computer. The saved audio recordings and paper exercises will be deleted from the university computer after being held for a period of up to 5 years. Within this time you may request to see any data collected in this particular study. However, as stated above, all names of individuals will be not be used without express permission and firms will be given a letter instead of their usual name.

#### Consent to Participate in the Study

We will be collecting data with table microphones or an ipad. Images may be taken of notes or artefacts produced by the group. The end result will capture your voice and some of your writing. We will start recording from a point indicated in the session. During this time you will be asked to discuss aspects of our assessment of clinic.

***In order to protect your clients' confidentiality, please avoid any case names during the session which may identify a particular client, although that will be deleted from the edited recording in any event.***

**Statement of Consent (please tick the relevant boxes here):**

- ☐ I have read and understand the study that I will be participating in;
- ☐ I have been given an opportunity to ask questions about the study;
- ☐ I understand that participating in this study will take round 1 hour of my time;
- ☐ I understand that taking part in the study will include being audio recorded and providing some written data;
- ☐ I have been given adequate time to consider my decision and I agree to take part in the study;
- ☐ I understand that any of my personal details, such as my name, will not be revealed to anyone outside of the research team without my express permission;
- ☐ I understand that my words may be quoted in publications, reports and other research outputs but my name will not be used without my express permission;
- ☐ I understand I can withdraw from the study at any time and I will not be asked any questions about why I no longer wish to take part.

*I agree to the University of Northumbria at Newcastle recording and processing this information about me. I understand that this information will be used only for the purpose(s) set out in this information sheet supplied to me, and my consent is conditional upon the university complying with its duties obligations under the Data Protection Act 1998.*

Name of Participant: \_\_\_\_\_ Date: \_\_\_\_\_

Name of Researcher: \_\_\_\_\_ Date: \_\_\_\_\_

